



# Opening New Markets in Europe

Creating Jobs and Opportunities for Canadians



## TECHNICAL SUMMARY OF FINAL NEGOTIATED OUTCOMES

Canada-European Union  
Comprehensive Economic and Trade Agreement

Agreement-in-Principle

Canada



# **TECHNICAL SUMMARY OF FINAL NEGOTIATED OUTCOMES CANADA-EUROPEAN UNION COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT**

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## **AGREEMENT-IN-PRINCIPLE**

This document summarizes the important negotiated outcomes of the Canada-European Union Comprehensive Economic and Trade Agreement as of October 18, 2013.

The outcomes are categorized in the following seven sections:

- 1. Non-agricultural goods**
- 2. Agricultural goods**
- 3. Services and investment**
- 4. Government procurement**
- 5. Intellectual property**
- 6. Dispute settlement, institutional and horizontal provisions**
- 7. Sustainable development, environment and labour**

## NON-AGRICULTURAL GOODS

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### Tariff elimination

#### *General*

- Full elimination of duties on all non-agricultural goods

#### *European Union*

- 98% of EU tariff lines set at 0% at entry into force
  - 99% of EU tariffs will be duty-free seven years after entry into force
- Transition periods of three, five or seven years on autos, certain fish and seafood products, and certain agricultural products
- Industrial goods: 99.3% of tariff lines duty-free immediately at entry into force
  - 100% of tariff lines will be duty-free seven years after entry into force
- Fish and seafood: 95.5% of tariff lines duty-free immediately at entry into force
  - 100% of tariff lines will be duty-free seven years after entry into force
  - transitional tariff rate quotas (TRQs) for key Canadian exports (23,000 tonnes of shrimp and 1,000 tonnes of cod)

#### *Canada*

- 98.4% of tariff lines at 0% at entry into force
  - 98.8% of Canadian tariff will be duty-free seven years after entry into force
- Non-agricultural: 99.6% tariff lines duty-free immediately at entry into force (including fish and seafood)
  - 100% of tariff lines will be duty-free seven years after entry into force
- Transition periods of three, five or seven years for certain sensitive products
  - ships: three and seven years
  - autos: three, five and seven years
  - certain agriculture goods (see separate agriculture summary): three, five and seven years

#### *Rules of origin*

- Favourable rules of origin that follow the Canadian style of drafting
  - allows Canadian products to qualify for tariff elimination
  - recognizes global value chains
  - encourages use of Canadian inputs
- Derogations (origin quotas) for products with a higher proportion of imported inputs
  - automobiles (see automobiles section)
  - fish/seafood (see fish and seafood section)
  - textiles and apparel (origin quotas for textiles and apparel cover Canada's and the EU's top exports)
  - high-sugar-containing products (see separate agriculture summary)
  - chocolate and confectionery (see separate agriculture summary)
  - processed foods (see separate agriculture summary)
  - cat and dog food (see separate agriculture summary)

## Customs and trade facilitation

- Access to advance rulings on the origin or tariff classification of products
- Automated border procedures where possible
- An impartial and transparent system for addressing complaints about customs rulings and decisions

## Industrial goods

### *European Union*

- 99.3% of industrial goods tariff lines at 0% at entry into force
  - immediate duty-free sectors include
    - » forestry products: current duties between 0% to 10% (average of 1.2%), all duty-free on day one
    - » chemicals and plastics: current duties between 0% to 6.5% (average of 4.9%), all duty-free on day one
  - transition period on autos only: three, five and seven years to match Canada's phase-outs

### *Canada*

- 99.6% of industrial goods tariff lines at 0% at entry into force
  - transition periods for
    - » ships: three-year and seven-year phase-outs
    - » automobiles: 3 three-, five- and seven-year phase-outs (see autos section below for more detail)

## Fish and seafood

### *European Union*

- 95.5% of tariff lines at 0% at entry into force
  - immediate tariff elimination includes:
    - » live lobster – current duties at 8%
    - » frozen lobster – current duties from 6% and 16%
    - » frozen scallops – current duties at 8%
    - » frozen shrimp – current duties at 12%
    - » cooked and peeled shrimp in retail packages – current duties from a rate of 20%
    - » fresh or chilled hake – current duties at 15%
    - » dried and salted cod – current duties at 13%
    - » frozen herring – current duties at 15%
    - » frozen mackerel – current duties at 20%
    - » fresh or chilled halibut – current duties at 15%
    - » salmon – from rates of up to 15%
    - » processed salmon – current duties at 5.5%
    - » snow crab – from rates up to 8%
    - » fresh, chilled and frozen mussels – from rates up to 20%
    - » dogfish – from a rate of 6%
  - duty-free transitional TRQs with no end-use requirements for:
    - » processed shrimp (two tariff lines) – 23,000 tonnes – current duties at 20%
    - » frozen fillets of cod (one tariff line) – 1,000 tonnes – current duties at 7.5%

- Favourable rules of origin under which the majority of Canadian fish and seafood products will qualify for preferential treatment
- Derogations for key products processed in Canada that use imported inputs, including:
  - prepared or preserved salmon: 3,000 tonnes
  - cooked and frozen lobster: 2,000 tonnes
  - prepared and preserved sardines: 200 tonnes
  - processed shrimp: 5,000 tonnes

## *Canada*

- 100% of tariff lines at 0% at entry into force
- Canada has eliminated tariffs on all of its fish/seafood tariff lines in all of its past free trade agreements (FTAs) (except in the Canada-Israel FTA)
- Minimum processing requirements on exports of fish and seafood to the EU to be protected for three years after entry into force of CETA, effectively five+ years of protection from today
- Port access
  - Canada commits to provide, in like circumstances, most-favoured nation treatment for EU member state vessels as compared to vessels of any other foreign states

## **Automobiles**

- EU: duties currently range from 3.5% to 22% (averaging 11.2%), transition periods of three, five and seven years to match Canada's offer
- Canada: duties currently at 6.1%, seven-year phase-out on most sensitive lines
- Rules of origin: main rule of origin with a 50% limit on non-originating materials, decreasing to 45% after seven years
  - origin quota of 100,000 vehicles under which a more liberal rule of origin applies (70% transaction value or 80% net cost) for non-originating materials
    - » Canada exported 10,023 cars to the EU in 2012 and an annual average of 8,180 cars between 2007-2012
  - a cumulation provision in the case of an EU-U.S. FTA, allowing auto parts originating in the United States to count towards the originating status of a vehicle produced in Canada or the EU following discussions between the parties on the applicable conditions
    - » one year after the implementation of a provision allowing for cumulation with the United States, the origin quota is eliminated and the main rule of origin includes a 40% limit on non-originating materials
- Standards:
  - annex on motor vehicle regulations that focuses on strengthening cooperation and the sharing of information between the EU and Canada
  - Canada agreed to the inclusion of this annex only on the basis that it does not compromise safety or North American integration of the auto manufacturing market
  - one of the cooperation elements in the annex is the listing of 17 United Nations Economic Commission for Europe (UNECE) standards that, by the Agreement's coming into force, Canada will have incorporated, in whole or in part, as an allowable alternative within its standards
    - » Canada already incorporates 14 of these UNECE standards within its regulatory regime.
    - » By the time the Agreement comes into effect, three additional standards will have been incorporated, in whole or in part, as an additional alternative within Canadian regulations. These standards relate to motorcycle controls and displays, motorcycle mirrors, and electronic stability control for passenger cars.
    - » The relevant parts of these UNECE standards should provide for an equivalent level of safety and will, therefore, have no negative implications on the safety of vehicles in Canada.
  - parties agreed on a work program to discuss future regulatory cooperation

## Forestry

- On entry into force, elimination of all existing tariffs, currently up to 10%
- Created a specific Bilateral Dialogue on Forest Products to facilitate regular engagement between Canadian and EU forestry experts
  - this will enhance Canada's ability to influence the development of EU measures
  - the objective is to minimize potential impacts of EU measures on Canada's exports and help ensure continued access for Canadian forest products to the EU

## Wine and spirits

- Incorporated existing Canada-EU Wine and Spirits Agreement
- Protected key practices:
  - Quebec bottling requirements for retail sale, private outlets in Ontario and B.C., and winery sales across Canada
- As in other FTAs, removal of the federal blending requirement for imported distilled spirits
- Obligation not to violate competition laws for "out of province" activities
- Cost of service differential
  - in addition to incorporation of existing audit requirement, obligation not to impose cost of service on a value basis (specific rates based on volume still permitted)

## National treatment and market access (rules)

- National treatment obligation to ensure goods are not subject to discriminatory treatment by the other party
- Obligation to ensure fees charged on importation or exportation must be commensurate with cost of services rendered
- General prohibition on import/export restrictions
  - agreed to allow EU to maintain its entry price system on some fruits and vegetables in return for Canada maintaining its right to use special safeguards on over-quota supply managed goods
- Institutional provisions:
  - consultations and Committee on Trade in Goods and Rules of Origin to resolve trade irritants
- Prohibition of duty drawback on bilateral trade
- Log export controls
  - finalization of details to be confirmed, but EU has offered carve-out in text for Canadian system of log export controls

## Subsidies and trade remedies

- Reaffirms WTO rights and obligations for trade remedies and subsidies
- Additional transparency and consultation mechanisms for subsidies to enable parties to exchange information and to discuss subsidy programs that may be adversely affecting their interests
- Export subsidies: bilateral prohibition of agriculture export subsidies conditional on tariff elimination
- Agricultural subsidies: consultative mechanism on all forms of government support for agriculture products

## Regulatory cooperation

- First regulatory cooperation chapter in any Canadian FTA
- Creates a formal mechanism that will facilitate joint initiatives between Canadian and EU regulatory authorities

- includes comparing data collection and analysis practices, reviewing lessons learned, conducting risk and regulatory impact assessments
- Facilitates earlier access to regulatory development processes
  - to reduce differences in approach in order to achieve more compatible measures and fewer trade barriers
- Promote cooperation related to animal welfare

### Technical barriers to trade

- Incorporates and builds on key provisions in the WTO Agreement on Technical Barriers to Trade
- Establishes procedures through which Canada and the EU can request that each other's technical regulations be considered as equivalent
- Allows interested persons in either Canada or the EU to participate in public processes for the development of technical regulations
- Committee where trade irritants can be raised as they arise so Canada and the EU can work on resolving them as soon as possible

### Conformity assessment

- A protocol will provide for the acceptance by Canada and the EU of test results and product certification by recognized bodies in the other party.
  - test and certification bodies would seek accreditation from a body in the other party
  - once accreditation bodies establish arrangements, testing and certification bodies could elect to be recognized in certain areas through one mutually accepted accreditation
- This will reduce testing and certification costs and associated marketing delays for manufacturers.
- While the text of protocol is stable, the issue of scope and coverage continues to be discussed. Canada has sought from the beginning of negotiations an ambitious scope that would, at a minimum, include coverage of construction products, medical devices, machinery (including equipment for use in explosive atmospheres and noise emissions of outdoor equipment), measuring instruments, and those sectors covered under the 1998 Canada-EU mutual recognition agreement (electrical and electronic equipment, radio and telecommunications equipment, and boats). Canada is also seeking coverage of gas appliances, personal protective devices, toys, pressure equipment, boilers, marine equipment and other sectors (to be confirmed).



## AGRICULTURAL GOODS

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### European Union

#### *Tariffs*

- 93.6% of agricultural tariff lines set at 0% at entry into force
- Tariffs to be eliminated immediately
  - maple syrup: current duty 8%
  - fresh and frozen fruits, such as
    - » cherries: EU seasonal duties reaching as high as 12%
    - » fresh apples: EU seasonal duties reaching as high as 9%
    - » frozen blueberries: 3.2%-14.4%, but currently suspended
  - processed fruits and vegetables, such as
    - » frozen potato products, including french fries: current duties 14.4%-17.6%
    - » sweetened, dried cranberries: current duty 17.6%
  - processed products, such as
    - » cat and dog food: current duties up to \$1,218/tonne
    - » miscellaneous food preparations: current duties start at 12.8%
    - » oils, including canola oil: current duties 3.2-9.6%
  - processed pulses and grains, which include baked goods, pulse flour, meal and powder (EU tariffs start at 7.7 percent)
  - other products, such as mushrooms, potatoes, peas, cranberries, raspberries and strawberries, as well as processed products such as jams, jellies and juices, fruit and nut bars, yeasts, mixed seasonings and condiments, sugar confectionery, chocolates and mixes and doughs
- Transition period of seven years for grains
  - current duties of up to \$190/tonne for durum and up to \$122/tonne for high-quality common wheat (currently both applied at 0%, but not bound)
  - current duties up to \$122/tonne for low- to medium-quality common wheat
    - » creation of a duty-free low- to medium-quality transitional quota of 100,000 tonnes, incorporating Canada's existing 38,853-tonne share of the EU's global quota
  - current duties up to \$120/tonne for rye and barley, \$114/tonne for oats
- Immediate duty-free in-quota access for 8,000 tonnes of sweet corn
- Duty-free, quota-free access to EU dairy market
- Beef and veal market access
  - duty-free in-quota access secured for total of 50,000 tonnes carcass weight, including the incorporation of Canada's share of the hormone-free quota (3,200 tonnes product weight or 4,160 tonnes carcass weight)
    - » includes 70% (or 35,000 tonnes carcass weight) for fresh, chilled product
    - » includes 15,000 tonnes carcass weight for frozen product
  - in addition, immediate duty-free in-quota access for Canadian product shipped under the existing high-quality beef quota (11,500 tonnes product weight or 14,950 tonnes carcass weight, but administered on a product-weight basis): current in-quota duty 20%
  - continued access to the EU's existing beef quotas

- duty-free immediate treatment of all processed beef tariff lines (Chapter 16)
- Bison market access
  - immediate duty-free in-quota access secured for 3,000 tonnes carcass weight of Canadian bison
- Pork market access
  - immediate duty-free in-quota access secured for 81,011 tonnes carcass weight of Canadian pork, including the incorporation of Canada's country-specific quota (4,624 tonnes product weight or 6,011 tonnes carcass weight)
  - available for fresh, chilled and frozen product
  - duty-free immediate treatment for pig fat; salted, dried, smoked and cured boneless pork; and all other processed pork tariff lines in Chapter 16, such as sausages

### *Rules of origin*

- The majority of Canadian agricultural goods will meet the main product-specific rule of origin, thus qualifying for duty-free treatment
- Derogations (which provide more liberal rules of origin than the general rules of origin) for products with a higher proportion of imported inputs:
  - products with high sugar content (such as flavoured drink mixes, iced-tea mixes, and instant hot chocolate and coffee), for an initial volume of 30,000 tonnes, with a conditional growth mechanism to permit an increase up to 51,840 tonnes over 15 years
  - chocolate and sugar confectionery (such as bubble gum, sugar candies and chocolate preparations), for 10,000 tonnes
  - processed foods (such as baked products, breakfast cereals, mixes and doughs, rice, pasta, and certain jellies), for 35,000 tonnes
  - dog and cat food, for 60,000 tonnes
  - predetermined volumes are all approximately three times current trade
  - volumes will be reviewed every five years when fill rates are above 60%

## **Canada**

- 92.0% of agriculture tariff lines set at 0% at entry into force
- 7.1% of lines excluded
- Supply-managed products
  - no reduction in over-quota tariffs
  - poultry and eggs are excluded
  - no tariff rate quotas (TRQs) other than cheese
    - » Total cheese TRQ for the EU will comprise:
      - ▶ 16,800 tonnes of cheese
        - › 16,000 tonnes new market access, and Canada will fulfill our existing but not yet implemented obligation to reallocate to the EU 800 tonnes from the existing WTO TRQ to address new member state accession to the EU
      - ▶ 1,700 tonnes for industrial-use cheese
  - phase-out of the milk protein substances tariff (United States already has tariff-free access into Canada)
  - no additional access provided for any other Canadian supply-managed products
  - the federal government will monitor impact and, if needed, provide compensation should a negative impact be observed
  - the federal government will also explore other ways of addressing circumvention of import-control measures

## **Biotechnology**

- Agreed text is anchored on the principle of cooperation, in particular encouraging and building on cooperation between regulators.
- The text also notes the importance of promoting efficient science-based approval processes, cooperating on low-level presence, and minimizing adverse trade impacts of regulatory practices.
- With respect to the approval of canola traits, Canada leveraged the CETA negotiations to get agreement with the EU on a parallel letter to demonstrate the EU's commitment to ensuring the efficient processing of canola applications and the expeditious movement of these proposals through the EU approval process.

## **Sanitary and phytosanitary measures**

- Agreed to reaffirm and build upon WTO sanitary and phytosanitary (SPS) commitments
- SPS provisions subject to dispute settlement
- Incorporates and updates the existing Canada-EU Veterinary Agreement
- Builds on the Veterinary Agreement to establish a framework for cooperation on the full scope of animal-health, plant-health and food-safety provisions
- Sanitary and Phytosanitary Measures Joint Management Committee of experts to discuss issues before they become problems, as well as facilitate discussions to resolve issues impeding trade
- Canada and the EU agreed to proactively determine equivalency of each other's inspection and certification systems
- With respect to a number of key red meat SPS issues, Canada achieved a parallel exchange of letters
  - The key objective for Canada is to ensure that commitments are made to facilitate trade in red meats, specifically by advancing the proposal for the acceptance of recycled hot water as a carcass-decontamination technique in the EU (lactic acid was approved in Feb. 2013), and by both Canada and the EU ensuring that both sides are committed to conducting the respective steps toward finalizing the equivalence determination on meat and meat products within a year

## SERVICES AND INVESTMENT

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### *General*

- Recognition of governments' right to regulate and right to sovereign control over the development of natural resources
- Health care, public education, other social services excluded
- Culture excluded (see dispute settlement and institutional provisions for details)
- Exclusions to allow for preferential treatment of Aboriginal peoples and minority groups
- Transparency and predictability of domestic regulatory regimes
- Binding of future autonomous liberalization (i.e. the “ratchet”—whenever a government liberalizes, that level of liberalization is locked in)
- Most-favoured nation (MFN) treatment

### *European Union*

- Canada's services exports to the EU worth \$14.5 billion (2012)
- Canadian direct investment in the EU totalled \$172.5 billion (2011)
- Best access ever provided to any FTA partner
- Broad coverage across all sectors
- Important sectors and services activities of export interest to Canada
  - research and development
  - mining
  - services related to energy
  - technical testing and analysis services
  - environmental services
  - computer and information technology
  - professional services, including
    - » legal
    - » architectural
    - » engineering
    - » urban planning

### *Canada*

- EU's services exported to Canada valued at \$16.8 billion (2012)
- EU's foreign direct investment in Canada totalled \$160.7 (2011)
- New market access provided for:
  - commercial dredging
  - repositioning of empty containers
  - uranium investment less restrictive: exempted from requirement of first finding a Canadian partner
    - » but *Investment Canada Act* (ICA) still applies
    - » national-security considerations protected
  - telecommunications reservation moved from Annex II to Annex I
    - » no change to current rules; locks in future liberalization

- Provinces and territories bound to regulatory status quo and provided the benefits of autonomous liberalization in a number of sectors (architectural, engineering, foreign legal consultancy, urban planning, tourism, business services)
  - Provincial and territorial non-conforming measures listed, more transparent; first time in an FTA
- *Investment Canada Act* protected
  - exempted from dispute settlement
  - threshold will be raised to \$1.5 billion for EU investors
    - » other FTA partners will benefit as a result of MFN commitments in those FTAs
  - EU includes a mirror reservation, ratcheted to Canada's reservation

## Labour mobility

### *Licensing and qualification requirements and procedures (including mutual recognition of professional qualifications)*

- First time that substantive and binding provisions on licensing and qualification, as well as the mutual recognition of professional qualifications, have been included in any of Canada's free trade agreements
- Process of recognizing foreign qualifications streamlined
  - provides a detailed framework so that regulators or professional organizations may negotiate mutual-recognition agreements
- Professional associations (e.g. architecture) in Canada and the EU have already engaged in discussions on mutual-recognition agreements
  - Other professions (engineers, foresters) have expressed interest in future engagement

### *Temporary entry*

- EU commitments are the most ambitious ever in a free trade agreement
- Canada's offer is in line with the level of ambition taken by the EU
- Includes coverage of
  - intra-corporate transferees
  - investors and business visitors for investment purposes
  - contract service suppliers and independent professionals (including a broad coverage of professionals, and limited coverage of technologists) with contract length of 12 months or less
  - short-term business visitors including after-sales and after-lease services
- Commitments for contract service suppliers and independent professionals have been taken on a reciprocal basis, on a sector and member-state basis
- Minimum stay generally applies equally to both Canada and the EU
  - intra-corporate transferees (senior personnel and specialists): lesser of 3 years or length of contract
  - contract service suppliers, independent professionals, intra-corporate transferees (graduate trainees) and investors: lesser of one year or length of contract
  - short-term business visitors (including for investment purposes): 90 days within any six-month period.
- Spouses of intra-corporate transferees, contract service suppliers and independent professionals
  - EU agrees to bind outcome of Intra-Community Transfer directive
  - as the EU's Intra-Community Transfer directive is likely to be less ambitious than Canada's proposed approach for spouses, Canada will likely offer to reciprocate any eventual access from the EU.

## Financial services

- Main elements of the Financial Services chapter build on Canada's existing model for trade in financial services
- A robust prudential exception that will protect reasonable measures taken for prudential reasons
- Prudential guidelines setting out a process and principles clarifying application of the prudential carve-out
  - the guidelines provide clarity on the prudential carve-out and set out a process to limit frivolous claims
- Scope of investor-state dispute settlement (ISDS): investors in the financial sector will now have recourse for breach of national treatment, most-favoured nation and treatment of investors in addition to expropriation and limits on transfers
- The market-access offers, for the most part, will bind the existing financial-sector regulatory framework

## Investment protection rules

- Strong rules that take into consideration lessons learned from past FTAs and foreign investment promotion and protection agreements
- Commitments to treat investors from Canada and the EU fairly and equitably and in non-discriminatory manner
- Provisions on expropriation, including indirect expropriation
  - annex clarifies that non-discriminatory, good-faith measures to protect health, safety and the environment do not constitute indirect expropriation
- Robust and innovative provision on minimum standard of treatment
  - new format for article but substantively the same as NAFTA (that is, substantively the same as the customary international-law minimum standard of treatment)
- Investment-protection rules subject to ISDS on only a post-establishment basis

## Investor-state dispute settlement (ISDS)

- Clear and detailed rules of procedure to promote the efficient resolution of investor-state disputes
- Enhanced consultations and new mediation provisions encourage early settlement of disputes without recourse to arbitration
- Transparent ISDS process, making submissions to the arbitral panel public and generally opening hearings to anyone interested
- Allows amicus curiae interventions (non-disputing individuals and organisations may seek leave to submit briefs to the arbitral panel)
- Provisions to allow for early dismissal of frivolous and stale claims to ensure that the process will not be abused
- Standing provision adjusted for the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "ICSID Convention")
  - allows an investor to bring a claim against the host state for a breach of obligation and for damages arising from that breach
  - Canada plans to become a party to the ICSID Convention, which allows for locally established, foreign-owned companies to bring a claim.
- Accordingly, when the ICSID Convention arbitral rules apply, that foreign-owned company may initiate a claim
  - does not change the result of Canada's current standing approach
- To pursue an ISDS claim, an investor must file a waiver abandoning any other parallel claim it may have seeking damages related to the same measure(s)
  - future claims are also prohibited when the ISDS claim is dismissed on its merits
  - if the ISDS claim is dismissed in its early stages, such as on procedural or jurisdictional grounds, then an investor may pursue its claim elsewhere

- if the ISDS claim is withdrawn within 12 months, the investor may pursue its claim elsewhere
- An ISDS tribunal cannot order the repeal of the host state's measure
  - It may order an award, separately or in combination, for damages or restitution of property, as well as costs.
  - When calculating a damages award, a tribunal must consider, amongst other factors, whether a measure has been voluntarily repealed or modified.
    - » This may serve to discount the amount of damages awarded to the investor.
- Canada and the EU may adopt interpretations of a provision in the investment chapter that are binding on investor-state dispute-settlement arbitration tribunals
  - Such interpretations can be used to clarify the parties' intent when the obligations were negotiated.

## **Monopolies and state enterprises (MSEs)**

- Disciplines to ensure monopolies and state enterprises operate in a non-discriminatory manner and in accordance with commercial considerations
- MSEs with public-service obligations will continue to have flexibility to serve public interests
- Nothing in the chapter prevents parties from designating or maintaining a monopoly or state enterprise
- Disciplines on entities with special rights and privileges
  - but clarify that the granting of a licence to a limited number of enterprises in allocating a scarce resource through objective, proportional and non-discriminatory criteria is not in and of itself a special right or privilege
- Non-discrimination and commercial-consideration obligations do not apply to measures of a covered entity where a national treatment or MFN reservation have been taken
  - this includes entities engaged in buying and selling of energy
- The disciplines of the MSE chapter do not apply to procurement by a party for goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of goods and services for commercial sale
  - these procurements are excluded whether or not it is "covered procurement" as defined in the government-procurement chapter

## GOVERNMENT PROCUREMENT

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### *General*

- Maintained ability to give preferences to domestic companies
  - when using grants, loans or fiscal incentives
  - for procurements below thresholds value
  - for excluded procurement
- Maintained ability to specify technical considerations, including relevant experience
- Maintained ability to include social and environmental criteria in contract requirements
- Maintained ability to determine the form of procurement (open or limited) or negotiate with potential suppliers based on criteria that are the same as the WTO-Government Procurement Agreement (GPA) and similar to those of the Agreement on Internal Trade
- Maintained ability to shorten the deadlines to submit a bid when certain conditions are met (e.g. pre-posting of a notice of planned procurement no more than 12 months in advance, accepting tenders by electronic means, etc.)
- Maintained broad exception for
  - national security and measures necessary to protect public morals, order or safety
  - human, animal or plant life or health
  - intellectual property
  - measures relating to goods or services of persons with disabilities, philanthropic institution or prison labour
  - Aboriginal businesses

### *European Union*

- Provided preferential access to EU \$2.7-trillion government-procurement market
- The most comprehensive and favourable market access offered by the EU to any member of the G-20
- Broad coverage for goods and services to be supplied either directly to government entities or through EU suppliers engaged in procurement contracts with:
  - the three main EU-level institutions (European Commission, European Parliament and European Council)
  - 28 EU member-state governments
  - thousands of regional and local government entities within the EU
  - large array of entities operating in the utilities sector.
- Thresholds (SDR = special drawing rights; 1 SDR = 1 euro = \$1.577 CDN for 2012-2013)
  - goods and services
    - » European entities and central member-state government entities: 130,000 SDR/euros
    - » sub-central entities (regional and local entities and bodies governed by public law, including hospitals, schools, universities and social services): 200,000 SDR/euros
    - » other sub-central entities: 355,000 SDR/euros
    - » utilities sector: 400,000 SDR/euros
  - construction services
    - » all entities: 5 million SDR/euros
  - all thresholds are identical to those of EU domestic directive providing the same access to Canada as offered among EU member states within the EU's internal market
    - » one exception: 355,000 SDR/euros for other sub-central entities (to reciprocate Canada's threshold for sub-central entities)
- Exclusions for:
  - ports and airports



- broadcasting
- postal sector
- shipbuilding and maintenance by utilities, bodies governed by public law and local authorities
- No exclusion for
  - regional economic development (although Canada has maintained this exclusion)
  - cohesion fund
  - pre-contractual remedies for the first 10 years—this allows suppliers to stop the award of a contract before it is signed (if Canadian provinces and territories do not make available similar remedies under their domestic-review regimes, Canada will lose access to the pre-contractual remedies)
- More comprehensive coverage than Canada for important areas such as:
  - energy
  - bodies governed by public law
  - cultural industries
  - public transit

## *Canada*

- Broad coverage at federal, provincial and municipal levels
- Most comprehensive and favourable market access offered by Canada under any of its FTAs
- Thresholds for provinces and territories (1 SDR = \$1.575 CDN for 2012-2013)
  - high-value contracts and thresholds generally aligned with the Canada-U.S. Procurement Agreement / WTO Government Procurement Agreement (GPA) (355,000 SDR)
  - significantly higher thresholds than the Agreement on Internal Trade (which range from \$25,000 for goods and services to \$250,000 for construction services)
  - Thresholds for procurement of goods and services
    - » provinces and territories: 200,000 SDR (\$315,000) for government entities including municipalities, academia, school boards and hospitals (MASH)
    - » federal government: 130,000 SDR (\$205,000)
    - » other government entities (arms-length and crown entities): 355,000 SDR (\$560,000) (federal and provincial and territorial governments)
    - » utilities sector: 400,000 SDR (\$630,000) (all governments)
  - construction services (all governments)
    - » 5 million SDR (\$7.8 million) for all entities
- Coverage of 75-80 percent of procurement by major energy entities across Canada, with commitments by all provinces and territories with major energy-production and distribution capacity
- Coverage of mass transit by all provinces and territories; Quebec and Ontario to retain a 25 percent Canadian value for the procurement of public-transit vehicles (rolling stock) with Quebec able to require that final assembly be in Canada within its 25 percent
- Commitment to create single point of electronic access within five years from entry into force
  - will be beneficial to Canadian and EU companies and increase transparency in procurement process
- Procurements in the following areas are excluded from coverage
  - health care and other public services
  - set-asides for Aboriginal businesses
  - regional economic development exclusion for Manitoba, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Prince Edward Island, New Brunswick and Yukon:
    - » for procurement contracts of \$1 million or less or as a maximum value within a larger procurement contract and intended to support small firms or employment opportunities in non-urban areas and
    - » no more than 10 times per province or territory per year
    - » not available for procurement funded by the federal government

- agricultural goods that are part of food programs
- works of art and cultural industries in Quebec (consistent with Quebec's exclusion in the GPA) and for all municipalities, school boards and academic institutions in all other provinces and territories
- procurement for co-production and broadcasting time across Canada (all jurisdictions)
- research and development
- public-private partnerships/works concessions for services and the utilities sector
- shipbuilding and repair (federal and British Columbia, Manitoba, Newfoundland and Labrador, New Brunswick and Nova Scotia)
- sensitive goods when procured by security-mandated entities, such as police forces and any related services for those excluded goods
- all major ports and airports (Canadian airport authorities and Canada Port Authorities)
- consulting services regarding matters of a confidential nature below 355,000 SDR (\$560,000)
- goods or services purchased for representational or promotional purposes by Alberta, British Columbia, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Quebec and Saskatchewan.
- any in-house procurement or procurement made on behalf of non-covered entities

# INTELLECTUAL PROPERTY

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## Pharmaceuticals

### *Data protection*

- Canada rejected the EU request to provide 10 years of data protection
- Canada agreed to lock in the current Canadian practice of providing eight years of market exclusivity
  - current regulations provide a six year “no-filing” period during which no applications for generic drugs are accepted for regulatory consideration and a two-year “no-marketing” period during which generics can progress toward market readiness but cannot be sold

### *Patent linkage / right of appeal*

- Canada agreed to a general commitment to ensure that litigants are afforded effective rights of appeal, which gives scope for Canada to end the practice of dual litigation.
  - ensures all litigants have equal appeal rights
  - will bring improvements to Canada’s pharmaceutical intellectual property regime by taking inefficiencies out of the system
  - litigation in this area is currently one of the largest draws on the federal court system
  - guarantee of an effective appeal for brands and more certainty for generics
- Background:
  - Both generic and brand-name drug manufacturers take issue with the status quo regarding the opportunities for litigation and appeal in Canada.
  - Brand-name manufacturers do not have an effective right of appeal under the patent-linkage system.
  - Generic manufacturers note that a successful result under patent-linkage litigation is no guarantee of success in the case of subsequent litigation under the *Patent Act*.

### *Additional protection*

- Canada agreed to provide additional (sui generis) protection for pharmaceutical products protected by eligible patents in Canada.
- The period of protection will be calculated using reference points including the filing of the application for the patent and the first authorization to place the product on the Canadian market.
  - The period of protection offered by Canada will never exceed a fixed cap of two years.
  - The cap on the period of protection in the EU remains higher, at five years.
- Exceptions have been negotiated to allow for Canadian-made generic medicines to be exported during the period of additional protection.
  - This will temper the impact on the generic industry and its competitiveness in the important United States market.
- No retroactivity: pharmaceutical products that are already approved and on the Canadian market would not receive additional protection.
- Any cost impacts not likely to be felt until 2023\*.
  - \*using eight as an estimate of the average number of years that a pharmaceutical product would be on the market before becoming eligible for the type of additional protection negotiated in CETA, and assuming that CETA is ratified in 2015

- Should concessions to the EU in this area generate cost impacts on provincial and territorial governments, the federal government is prepared to address these incremental cost impacts.

## Copyright

- The CETA result on copyright reflects Canada's system as updated by the 2012 *Copyright Modernization Act*, which brought Canada into compliance with the two 1996 World Intellectual Property Organization treaties (Copyright, and Performances and Phonograms).
- Reiterates existing aspects of Canada's copyright regime, including term of protection, broadcasting, protection of technological measures (technology designed to protect copyrighted material), protection of rights management information, and liability of intermediary (e.g. Internet) service providers

## Trademarks and designs

- Canada did not take on specific commitments in this area. The CETA result on trademarks and designs reflects a best endeavours commitment to make all reasonable efforts to comply with international agreements and standards to encourage more effective trademark and industrial design procedures.
- With regard to the above, CETA specifically mentions the Singapore Treaty on the Law of Trademarks, the Protocol Related to the Madrid Agreement Concerning the International Registration of Marks, and the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs.

## Geographical indications (GIs)

- Canada currently recognizes a number of EU wines and spirit geographical indications (GI), such as Cognac and Bordeaux.
- Agreed to varying ways of addressing EU requests regarding 179 terms covering foods and beer
- Preserved space for Canadian trademark holders and for users of commonly used English and French names for food products
- Offer protection for GIs without prejudicing the validity of existing Canadian trademarks
- The economic impact will be contained in Canada.
- Enforcement of GIs in the Canadian market remains a private matter to be argued before the courts.
- Some EU GIs were protected but with the caveat that they not impact the ability of producers to use specified English- and French-language terms that are commonly employed in Canada.
  - The following terms continue to be free for use in the Canadian market, in both official languages, regardless of product origin: Valencia orange, Black Forest ham, Tiroler bacon, Parmesan, Bavarian beer, Munich beer.
  - For example, Canadian producers would be able to use English and French but not the German language for Black Forest ham (Schwarzwaelder Schinken).
- Limited GI rights provided to EU on: Asiago, feta, fontina, Gorgonzola and Munster
  - won't affect ability of current users of these names in Canada to continue use
  - future users will be able to use the names only when accompanied by expressions such as "kind," "type," "style," "imitation" or the like
- Canada preserves the ability to use the customary name of a plant variety or an animal breed.
  - Producers can, for example, sell the kalamata variety of olive and use the variety name in their packaging.
- Canada maintains ability to use components of multi-part terms, for example:
  - "Brie de Meaux" will be protected, but the term "brie" can be used on its own
  - "Gouda Holland" will be protected, but the term "Gouda" can be used on its own
  - "Edam Holland" will be protected, but the term "Edam" can be used on its own

- “Mortadella Bologna“ will be protected, but either “Mortadella” or “bologna” can be used separately
- Canada did not agree to protect the French term “noix de Grenoble” (walnut, in English), meaning this term remains free for use in Canada.
- Budweiser beer : Canada will not protect the GI “Budejovicke,” which prevents any potential conflict with the Budweiser trademark.
- Consultations were conducted with stakeholders, including meetings with individual trademark holders.

### **Plants and plant protection products**

- Reflects Canadian regime
  - provides certainty for data protection for plant protection products
- Commits both sides to co-operate to promote and reinforce the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (UPOV)
  - Canada and the EU already work together under UPOV.
- CETA will not change the “farmers’ privilege” to save and replant seeds of a protected variety on their own land under the federal *Plant Breeders’ Rights’ Act*.

### **Enforcement**

- Commitment to ensure simple, fair, equitable and cost-effective enforcement of intellectual property rights
- Includes provisions on civil remedies and border enforcement in line with Canada’s existing regime and federal Bill C-56, Combating Counterfeit Products Act
- Commitments concerning the handling of geographical indications at the border: to be confirmed
  - This is not expected to interrupt trade at the border.

## DISPUTE SETTLEMENT, INSTITUTIONAL AND HORIZONTAL PROVISIONS

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### Dispute settlement

- Most efficient and innovative process for state-to-state dispute settlement of any of Canada's free trade agreements (FTAs)
- Includes robust provisions on voluntary mediation
  - encourages and enables a more expedited resolution of CETA disputes
- Builds on lessons learned from past experience
- Significantly shorter than WTO dispute resolution process
- Includes a single short process to determine whether a party has complied with a decision
- Includes a process for ensuring panel composition even in the absence of an agreed roster to prevent a party from blocking a dispute by not allowing a roster to be developed
- Efficient three-person panels
- Specialized rosters and dispute settlement provisions for certain sectors, including:
  - financial services
  - taxation
  - labour
  - environment

### Exceptions

- Exceptions for measures with respect to cultural industries are included in various chapters to maintain Canada's flexibility to protect and promote cultural industries, policies and programs
  - robust and innovative new approach, which provides protection as strong as, if not stronger than, previous FTAs
  - stakeholders from a range of cultural sectors (books, movies, television, music, performing and visual arts, among other areas) support the new, modernized format of the cultural industries exception
  - preamble recognizes the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions
  - exceptions for measures with respect to cultural industries will be included in the following areas:
    - » cross-border trade in services
    - » domestic regulation
    - » investment
    - » national treatment and market access for goods
    - » government procurement
    - » subsidies
    - » taxation
- A taxation article ensures protection for existing taxation measures as well as broad exceptions to ensure the ability of governments to implement efficient tax policies that are consistent with their overall social and economic objectives.
- A general exception for certain measures, including
  - those necessary to protect human, animal, or plant life or health, or relating to the conservation of exhaustible natural resources
  - general exception is in line with those included in previous FTAs
- An exception for measures taken to protect national security

## Committees

- The Agreement includes an overall trade committee, the CETA Trade Committee
  - The committee oversees and facilitates the implementation and application of the Agreement and supervises the work of the various CETA committees, sub-committees and dialogues.
- Committees, subcommittees and dialogues under the Trade Committee pertain to:
  - goods (trade in goods, tariffs, technical barriers to trade, rules of origin, origin procedures, customs and trade facilitation, sanitary and phytosanitary (SPS) measures, agriculture, among other areas)
  - services and investment (mutual recognition of professional qualifications, financial services, e-commerce, temporary entry, among other areas)
  - sustainable development (environment and labour)
  - regulatory cooperation
  - forestry products
  - government procurement
  - raw materials
  - biotechnology market access
- The scope of committee and subcommittees' mandates is generally limited to issues falling within the scope of the chapter.
  - e.g. the financial services sub-committee will deal with issues covering new financial services regulations and other issues within the financial services area
- Representatives of provinces and territories will have the opportunity to participate as members of the Canadian delegation in committees that deal with issues falling at least partially under provincial or territorial jurisdiction. This includes committees, sub-committees and dialogues, as established for:
  - mutual recognition of professional qualifications
  - labour
  - wines and spirits
  - technical barriers to trade
  - regulatory cooperation
  - cross-border trade in services
  - investment
  - government procurement
  - environment
  - sustainable development
  - forestry products
  - raw materials
  - biotechnology market access
  - horizontal provisions
- Extent of obligations provision as included in NAFTA and subsequent FTAs
  - recognizes that each party is responsible for ensuring the observance of obligations and commitments in the Agreement at all levels of government
- Transparency provisions
  - ensures that each party has access to information, such as laws or regulations, that can affect the operation of the Agreement
- Provision describing the process of accession of new EU member states
  - when a new member state joins the EU, the state becomes a party to CETA and must comply with all CETA obligations
- Termination and withdrawal provisions
  - allows any party to terminate or withdraw from the Agreement with six months notice

- Relation to provisions in other agreements
  - terminates or amends existing agreements that will become redundant or will need to be modified following the entry into force of CETA
  - e.g. termination of existing FIPAs with member states where required by EU law, modification and incorporation of the Wine and Spirits Agreement
- Clarification that water in its natural state is not a good or product, so is not subject to CETA

## **Preamble**

- Sets out a number of aspirational (non-binding) statements for CETA, including statements
  - reaffirming the parties' right to regulate (in a manner consistent with the Agreement)
  - affirming and recognizing the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions
  - recognizing the economic importance of innovation



## SUSTAINABLE DEVELOPMENT, ENVIRONMENT AND LABOUR

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### *General*

- First time Canada has a chapter on sustainable development in an FTA
- First time Canada includes chapters with substantive provisions on labour and environment in an FTA
- Provisions designed to ensure that any increased economic activity as a result of the FTA does not occur at the expense of environmental and labour protection
- All provinces and territories have agreed to immediate coverage under the sustainable-development, environment and labour provisions for the first time
  - full coverage has not been achieved in previous FTAs
    - » under the North American Agreement on Environmental Cooperation (parallel agreement to NAFTA), only three provinces have agreed to be bound (Alberta, Manitoba and Quebec)
  - under the Chile, Costa Rica, Peru, Colombia, Jordan and Panama environment agreements, no provinces and territories have agreed to be bound

### **Trade and Sustainable Development Chapter**

- Sets out commitments relating to sustainable development and enhanced coordination of environment, labour and trade policies by:
  - encouraging businesses to adopt practices that promote economic, social and environmental objectives
  - recognizing the benefits of eco-labeling and setting environmental-performance goals and standards
  - committing to review, monitor and assess the impact that implementation of the Agreement has on sustainable development in Canada and the EU
  - creating a forum to allow our civil-society organizations to discuss the sustainable-development aspects of trade relations between Canada and the EU
- Creates a committee of high-level representatives to oversee the implementation of the Trade and Sustainable Development, Trade and Environment, and Trade and Labour chapters
  - representatives of provinces and territories, as members of the Canadian delegation, will have the opportunity to participate in committee discussions—including discussions that deal with issues falling at least partially under provincial or territorial jurisdiction,

### **Trade and Environment Chapter**

- Contains provisions similar to those found in Canada's existing parallel environment agreements, including the North American Agreement on Environmental Cooperation
- Commitments include:
  - seeking to maintain high levels of environmental protection
  - effectively enforcing domestic environmental laws
  - not derogating from environmental laws to attract trade or investment
  - providing domestic sanctions or remedies for violations of environmental laws
  - promoting accountability and responsibility
- Robust definition of environmental law covers all laws that have as their purpose the protection of the environment, including environmental laws related to the management of natural resources

- Provisions related to sustainable trade in forest and fisheries products
- Provisions for cooperation on topics of mutual interest, including promotion of trade and investment in environmental goods and services
- Dispute resolution covers all obligations in the Chapter.
  - is based on a consultative and cooperative approach
  - if needed, consultation is followed by a review by a panel of experts that would issue a non-binding report
  - no penalties or trade sanctions in cases of non-compliance
- Environmental considerations were also included in other areas of CETA, including:
  - references to environment and sustainable development in the preamble
  - reference to environment was maintained in the general exception, which recognizes a party's right to regulate in the public interest, including measures to protect the environment (see dispute settlement and institutional chapter for more information)

## Trade and Labour Chapter

- Provisions of the labour chapter are similar to those in recent Labour Cooperation Agreements (LCAs) with Peru, Colombia, Jordan, Panama and Honduras
  - level of obligations is higher than in previous LCAs, as it includes a commitment to effectively implement the fundamental International Labour Organization (ILO) conventions that each party has ratified respectively: to be confirmed
- Includes commitments to ensure that national labour laws and policies in Canada and the EU respect the ILO's 1998 Declaration on Fundamental Principles and Rights at Work
- Includes a non-derogation clause that prevents either party from weakening its labour laws and lowering its labour standards in order to facilitate trade or encourage investment
- Establishes civil-society advisory groups
- Institutional structures set up to implement and monitor compliance with the established commitments
  - to provide views and advice regarding labour issues
  - creates a mechanism through which the public can raise concerns about labour issues related to the chapter
  - provinces and territories will be covered automatically by all of the provisions of the CETA
- Dispute-settlement provisions up to the level of a review panel, which can issue recommendations