



## CETA – Summary of the final negotiating results

This note summarises the key elements of the Comprehensive Economic and Trade Agreement between the EU and Canada (CETA).

The negotiators of the Commission and of Canada finalised their work in early August 2014. The Member States and the European Parliament received the complete text on 5<sup>th</sup> August (m.d. 259/14). President Barroso, President Van Rompuy and Prime Minister Harper announced the end of the CETA negotiations at the EU-Canada Summit on 26 September. The text of the agreement, to which this document refers, was made public the same day on the [website of DG Trade](#).

The European Commission and Canada are now conducting the legal review of the original (English) version of this text. It will subsequently be translated into the other official languages of the EU and Canada before being submitted to the Council and the European Parliament for approval.

The objective of CETA is to increase bilateral trade and investment flows and contribute to growth in times of economic uncertainty. This is in line with the Europe 2020 strategy to boost growth through external competitiveness and the participation in open and fair markets worldwide. To this end, the EU and Canada achieved the ambitious agreement they wanted, opening up new trade and investment opportunities for economic actors on both sides of the Atlantic. Both sides have also underlined the importance that economic activity takes place within a framework of clear and transparent regulation by public authorities, and that they consider the right to regulate in the public interest within their territories as a basic underlying principle of the Agreement. The EU and Canada are resolved to preserve their ability to achieve legitimate policy objectives, such as public health, safety, environment, public morals and the promotion and protection of cultural diversity.

The main final negotiating results are the following:

### **(1) Trade in Goods - Tariffs**

*The explanations below relate to the CETA Chapter on National Treatment and Market Access for Goods and in particular its annex on Tariff Elimination. The EU and Canada have agreed to eliminate customs duties for imports of goods originating in the EU and Canada either when CETA comes into force or gradually within 3, 5 or 7 years for almost all goods. For a few sensitive agricultural products, there will be a special treatment or an exclusion from any tariff reduction. The objective of duty elimination is to reduce the costs that exporters incur, and thus give them the opportunity to better compete on the market. It also leads to wider choice and lower prices for consumers. This tariff reduction and elimination ('liberalisation') is without any prejudice to the rules and regulations that the products in question need to satisfy on the respective import market (technical, sanitary or phytosanitary rules for the security and the*

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*protection of the consumer, the user or the environment, including notably food safety and labelling requirements). These rules remain untouched by CETA.*

The tariff reduction package is one of the most comprehensive the EU has ever achieved in the context of an FTA, notably with respect to the elimination of tariffs upon entry into force of the agreement. Overall, the tariffs for 98.6% of all Canadian tariff lines and 98.7% of all EU tariff lines will ultimately be fully eliminated. This will happen at entry into force of the agreement for 98.2% of the Canadian tariff lines and for 97.7% of the EU tariff lines. All other products identified for liberalisation will have their tariffs brought to zero within 3, 5 or 7 years. Overall, the result is balanced and reciprocal, and offers new opportunities while taking into account key sensitivities of both parties.

Broken down by respective product areas – industrial, fisheries, agriculture, this results in the following:

### Industrial tariffs:

100% of the tariff lines on industrial products for both sides will be fully eliminated, of which 99.6% upon entry into force in the case of Canada and 99.4% upon entry into force in the case of the EU. Amongst the few products not liberalised at entry into force are a limited number of automotive products, which will be liberalised on a reciprocal basis over 3, 5 or 7 years (17 products in the Canadian tariff offer and the corresponding products in the EU offer). In addition, Canada will dismantle its tariffs on ships over 7 years (the most favourable commitment that Canada has ever made for ships to a trading partner).

Based on 2009-2011 data, once fully implemented, EU exporters would save on average duty payments on industrial goods of €470 million annually; for Canada this figure would be €158 million.

### Fisheries:

Both sides will fully eliminate all tariffs on fisheries products. 76.4% of Canada's imports already enjoy a most favoured nation (MFN) tariff of zero percent, and Canada agreed to eliminate the remaining tariffs upon entry into force of the agreement. The EU agreed to eliminate 95.5% of its tariffs on these products upon entry into force of CETA and 4.5% of the tariffs within 3, 5 or 7 years.

For certain fisheries products, Canada already has a market access to the EU through autonomous EU tariff rate quotas (TRQs). In order to ensure that this existing market access will not decline prior to the full elimination of the relevant tariffs in CETA, the EU will offer two transitional duty free tariff rate quotas (TRQs), one of 23,000 tonnes for processed shrimps (CN 16052010 and 16052099), the other of 1,000 tonnes for frozen cod (CN 03042929). The size of these transitional TRQs is approximately equal to Canada's current duty free export levels under existing autonomous TRQs. They will be managed on a first-come-first served-basis and the agreed volume will be available as of entry into force of the agreement. These

TRQs will expire once the duties of the relevant tariff lines have been fully eliminated under CETA.

The liberalisation of the tariffs on fish has been part of a wider fisheries package which also includes the following elements:

- Rules of Origin (RoO)<sup>1</sup>: Canada accepted that its exports of fisheries products should meet the preferential RoO of the EU. However, given the difficulties for certain Canadian exporters to meet these rules and in order to address some specific Canadian needs, the EU granted Canada RoO derogations (exceptions for which a more relaxed rule of origin applies) for a limited number of products and within a limited volume of imports (notably 8 tariff headings at 6 digit level: CN ex 0304.29, ex 0306.12, 1604.11, 1604.12, ex 1604.13, ex 1605.190, 1605.20, 1605.30).
- Access to ports: As requested by the EU, Canada granted “Most Favoured Nation” (MFN) treatment to EU vessels; in other words, the access for EU fishing vessels to Canadian ports should be as favourable and cannot be more restrictive than for fishing vessels of other countries.
- Export restrictions: Several Canadian Provinces have export restrictions for raw fish (in the form of minimum local processing requirements). These export restrictions will be eliminated upon entry into force (however, the Province of Newfoundland and Labrador will eliminate the restrictions 3 years after CETA comes into force).
- Sustainable development<sup>2</sup>: Both sides agreed on commitments with respect to the conservation and sustainable management of fisheries, in particular with regard to monitoring, control and surveillance measures; the fight against illegal, unreported and unregulated (IUU) fishing; support to regional fisheries management organisations (RFMOs); and promotion of sustainable aquaculture.

### Agriculture:

Canada will eliminate duties for 90.9% of all its agricultural tariff lines upon entry into force of CETA. After 7 years, the tariffs for 91.7% of agricultural lines will be eliminated. The remainder are sensitive products, which will either be offered as a TRQ (dairy) or excluded altogether from liberalisation commitments (chicken and turkey meat, eggs and egg products). The Canadian offer on processed agricultural products (PAPs) - for example wines and spirits, soft drinks, confectionery, cereals-based products like pasta or biscuits, fruit and vegetable preparations - is of particular relevance because PAPs are among the main export interests of the EU and further market opening was one of the main EU negotiating objectives. With all but a very limited number of the Canadian tariff lines for PAPs now to be liberalised, the EU PAPs industry is expected to gain considerably from CETA.

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<sup>1</sup> See point (3) below.

<sup>2</sup> See also point (12) below.

Within the PAPs category, wines and spirits deserve a special mention, because these products are the major export item of the EU agricultural and food industry to Canada. Tariff elimination is complemented by the removal of other trade barriers, including several 'behind the border' barriers that have prevented the EU from substantially improving its performance in the Canadian market. Canada and the EU agreed on rules that will significantly improve the competitive situation of European products in Canada<sup>3</sup>. Furthermore, the existing EU-Canada Wines and Spirits Agreement has been incorporated into CETA. This allows us to better address concerns that may arise as regards the 'behind-the-border treatment' of European wines and spirits. The combined effect of these measures, which address all key requests of Member States and the EU industry, should further increase the EU share of the Canadian wine and spirit market.

Overall, the trade agreement should allow the EU to further increase its share of the Canadian market for agricultural products by eliminating duties that for the products mentioned above are mostly between 10 % and 25% of the product value (*ad valorem*).

The EU, for its part, will eliminate 92.2% of its agricultural tariffs at entry into force. After 7 years, 93.8% of the agricultural tariffs will be eliminated. The remainder are:

- products to which the entry price system applies (while the ad valorem component of duties on these products will be fully eliminated, the entry price system is maintained);
- sensitive products for which a zero duty but quantitatively limited TRQ has been offered (beef, pork, canned sweetcorn) and
- sensitive products which have been excluded from tariff reductions altogether (chicken and turkey meat, eggs and egg products).

In terms of volume of trade, 95% of the € 2.2 billion worth of EU agricultural exports to Canada will be fully liberalised. The EU will also fully liberalise 97.0% of its agricultural imports from Canada.

The annual quantities of the TRQs agreed for some of the more sensitive products mentioned above are the following<sup>4</sup>:

- Dairy: Canada will open for the EU a new bilateral quota of 17,700 tonnes of cheese, 16,000 tonnes of which are for high quality cheeses and 1,700 tonnes for industrial cheese. Moreover, 800 tonnes of high quality cheese will be added through a technical adjustment to the EU portion of an existing WTO TRQ. The effective total will therefore be 18,500 tonnes, thus more than doubling our exports of cheese to

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<sup>3</sup> Such as for example rules on the anti-competitive impact of the activities of certain provincial liquor boards and disciplines to ensure a more level playing field for the calculation of the service fees which are included by the liquor boards in the price of the product)

<sup>4</sup> For precise tariff line coverage of the respective TRQs please consult Annex 5 of the Trade in Goods chapter.

Canada. In fact, this will result in an increase of our exports of 128% and corresponds to more than 4% of the Canadian market. In addition, Canada will eliminate its tariff on milk protein concentrates. For its part, the EU will liberalise all its dairy tariff lines upon entry into force (which, however, ought to have a nearly insignificant impact, given that the EU imports extremely low quantities of these products from Canada (0.1% of agricultural imports from Canada, based on the 2012-2013 average).

- Beef: One of the most important elements for Canada in this negotiation has been beef, notably fresh beef.

The total duty-free access the EU will grant to Canada for beef amounts to 45,838 tonnes (expressed in carcass weight equivalent - CWE), of which 30,838 tonnes are fresh beef. To this volume, should be added the bilateral consolidation of the existing 4,162 tonnes CWE of fresh beef that the EU had already granted to Canada in the past as compensation for the hormones dispute. All of the above corresponds to about 0.6% of the total EU consumption. There will also be an EU TRQ for 3,000 tonnes of bison, which will apply at entry into force of CETA. Finally, the existing WTO TRQ for Hilton beef (11,500 tonnes, expressed in product weight<sup>5</sup>, shared between Canada and the US) will be maintained, but the in-quota duty will be brought to zero for Canada.

- Pork: The total duty-free access the EU will grant to Canada for pork is 75,000 tonnes CWE. To this should be added the existing WTO TRQ of 4,625 tonnes (expressed in product weight) which will be consolidated into CETA in order to simplify the administration of this quota by customs authorities and traders. All of the above corresponds to about 0.4% of the total EU consumption of pork.
- Sweet corn: The EU agreed to a TRQ of 8,000 tonnes of canned sweet corn at zero duty, which will apply upon entry into force.
- Common wheat: The current EU WTO-TRQ for low and medium quality common wheat of 38,853 tonnes for Canada will be increased to 100,000 tonnes and the in-quota rate will be brought to zero. This quota will expire once the tariff on common wheat is fully phased out under CETA. In exchange, Canada will eliminate its duties on existing WTO quotas for dairy, eggs and poultry upon entry into force.

The EU and Canada have also agreed modalities for the phasing in of TRQs' and the quota administration. These modalities can be summarised as follows:

- Quota administration: while the EU quotas on sweetcorn and bison will be managed on a first-come-first-served basis, the new EU quotas on beef and pork will be attributed - as requested by Member States - through an import licensing system designed to guarantee both a smooth flow of products imported throughout the year

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<sup>5</sup> Carcass weight equivalent (CWE) refers to a bone-in animal, product weight to a de-boned. The CWE/product weight conversion factors as agreed in the WTO are 1,3:1 for beef and 1,2:1 for pork.

and a maximum quota-fill. The EU quota on low and medium quality common wheat will be managed in accordance with Commission Regulation (EC) No. 1067/2008 of 30 October 2008. The existing quota for Hilton beef will continue to be managed as set out in the Commission's implementing regulation (EU) No 593/2013 of 21 June 2013. Canada will manage its new quota on cheese on the basis of an import licensing system and will guarantee access to newcomers into the system. All WTO quotas concerned by the agreement will keep their current quota administration.

- Phase in: The duty-free amounts allowed for beef, pork, sweetcorn and cheese under the respective TRQs will be gradually phased-in over 5 years. The full volume of duty-free imports allowed under the Hilton beef quota, as well as for bison and common wheat will be available as of entry into force of CETA.

## **(2) Trade in Goods - Other key elements**

Export duties and other export restrictions will be generally prohibited. This is important in particular with regard to energy and raw materials for which the EU is dependent on imports and of which Canada is a major producer.

Canada has also accepted a general prohibition of Duty Draw Back that will be applicable three years after entry into force of the Agreement.

The Chapter on Subsidies provides that Canada and the EU will not grant any export subsidies to agricultural products fully liberalised and/or covered by a tariff rate quota in the importing Party provided the in-quota tariff has been fully eliminated.

CETA contains no obligations related to the provision or the elimination of domestic agricultural or fisheries subsidies. Thus, the Parties remain free – under CETA – to grant such subsidies (in conformity, of course, with their respective obligations under WTO rules and commitments). However, a Party may request consultations in case it feels that its interests are or may be negatively affected by support measures of the other Party.

## **(3) Rules of Origin (RoO)**

*This point relates to the Rules of Origin Protocol of CETA. The rules of origin set the conditions under which a product qualifies as 'European' or 'Canadian' and hence for the tariff preferences of CETA. The objective is to avoid products of a third country indirectly benefitting from the Agreement. The EU and Canada have different rules of origin systems, reflecting the particular structures of their economies. In most of the cases, this did not constitute a problem, but for some products/sectors which are important for both sides and on which the rules strongly differed, a compromise had to be found.*

Both the horizontal and the product specific rules of origin are based to the extent possible on the standard EU rules. However, for cars, textiles, fish and some agricultural/processed agricultural products Canadian exporters would have had difficulties meeting the more stringent European rules. A compromise in the form of rules of origin derogations for a limited quantity of exports (exceptions for which a more relaxed rule applies) was necessary. In return, Canada agrees to follow the EU rules for the products in question when this derogation quantity is exceeded. In the case of textiles, reciprocal derogations providing for more relaxed rules of origin were also granted by Canada to EU exports.

The EU and Canada have also agreed on the possibility of a future rule of origin cumulation with the US for vehicles and a very limited number of agricultural products, provided TTIP is concluded and that there will be agreement between the EU and Canada on the conditions of such a cumulation. This would, for example, allow auto-parts originating in the US to count towards the originating status of a vehicle produced in the EU or in Canada.

CETA leaves open for the future the possibility of cumulation of origin with third countries with which both the EU and Canada have a free trade agreement. In that case, a material of the third country would be taken into consideration when determining whether a product is originating under CETA. This could support global value chains. However, a condition is that the FTAs of the third country with the EU and with Canada also foresee the possibility of cumulation. Furthermore, the EU and Canada need to agree on the applicable conditions for such a cumulation.

To help facilitate trade, Canada and the EU also commit to provide operators upon request written advance rulings relating to origin.

#### **(4) Technical Barriers to Trade (TBT)**

The chapter on technical barriers to trade (TBT) builds on the key provisions of the WTO TBT Agreement on Technical Barriers to Trade and contains provisions that will improve transparency and foster closer contacts between the EU and Canada in the field of technical regulations. Both sides also have agreed to further strengthen the links and cooperation between their standard setting bodies as well as their testing, certification and accreditation organizations.

A separate protocol will improve the recognition of conformity assessment between the Parties. It provides for a mechanism by which EU certification bodies will be allowed according to the rules applicable in Canada to certify for the Canadian market according to Canadian technical regulations and vice-versa. This will considerably reduce the costs for testing (in particular by avoiding double-testing on both sides of the Atlantic) and obtaining product certification for exporters and will in particular benefit small and medium sized enterprises.

**(5) Sanitary and Phytosanitary (SPS) rules**

The CETA SPS Chapter preserves the rights and obligations of the EU and of Canada under the WTO SPS Agreement.

As regards meats and meat products, the existing EU-Canada Veterinary Agreement was integrated into CETA, confirming the successful and mutually beneficial collaboration in the veterinary field. As additional elements of trade facilitation, the Parties agreed to simplify the approval process for exporting establishments and work on further elements aimed at minimising trade restrictions in the event of a disease outbreak. The ultimate objective is to work on the basis of EU-wide instead of Member State-specific sanitary assessments for exports of meat and meat products to Canada. This is already being implemented.

In the area of plant health, CETA sets up new procedures that will facilitate the approval process of plants, fruit and vegetables by Canada. A work programme has been set up so that in the future, CETA will also cater for an EU-wide assessment and approval process for fruits and vegetables. The aim is to reduce time and costs and create a more predictable environment for EU exporters. For all product categories, the parties agreed to establish fast-track procedures for items identified as priorities.

Overall, CETA will further streamline approval processes, reduce cost and improve predictability of trade in animal and plant products.

CETA will streamline processes but it will not amend either the European or the Canadian SPS rules. All products need to fully comply with applicable sanitary and phytosanitary standards of the importing Party.

**(6) Customs and Trade Facilitation**

The Chapter on Customs and Trade Facilitation will simplify and render more transparent the customs clearance of goods in order to facilitate bilateral trade and reduce transaction costs for importers and exporters. To this end, it sets common principles and provides for enhanced cooperation and exchange of information between the customs authorities of the EU and Canada with a view to facilitate, where possible, import, export and transit requirements and procedures.

Provisions on transparency ensure that legislation, decisions and administrative policies, fees and charges related to the import or export of goods and governing customs matters are made public and that for new customs-related initiatives interested persons have an opportunity to comment before their adoption.

Canada and the EU undertake to apply simplified, modern and where possible automated procedures for the efficient and expedited release of goods, resorting where appropriate to risk management, release of goods at the first point of arrival, simplified documentation requirements for the entry of low-value goods and pre-arrival processing.

The EU and Canada will issue, upon request, advance rulings on the tariff classification of goods.

In addition, Canada and the EU will provide for an impartial and transparent system for addressing complaints by operators about customs rulings and decisions.

### **(7) Services and Investment**

*The comments below relate to the CETA Chapters on Cross Border Trade in Services, Temporary Entry, Mutual Recognition of Professional Qualifications, Domestic Regulation, Financial Services, International Maritime Transport Services, Telecommunications, Electronic Commerce as well as parts of the Chapter on Investment. They also relate to the annexes, which list the reservations both the EU and Canada have taken as regards obligations on National Treatment, Most-Favoured-Nation Treatment, Market Access, and Performance Requirements in the area of Services and Investment. There are two types of such schedules. The first is the so called 'Annex I' which lists all the existing measures and restrictions that Canada and the EU and its Member States want to maintain vis-à-vis service providers and investors of the other side. No restrictions other than those explicitly listed apply. The market access provided through Annex I is guaranteed, without the risk of a rollback. Furthermore, the service providers and investors will benefit of any future liberalisation. The second is 'Annex II', which equally lists existing measures and restrictions that the parties want to continue to apply, but in addition reserves the right to adopt new or different (and even more restrictive) measures in the future. This is relevant for the more sensitive sectors for which the Parties want to preserve their ability to regulate economic activity, for whatever reason - even if that involves limiting the access to their markets or discriminating against foreign service providers and investors. Public authorities can make use of this flexibility not only on the basis of existing laws or regulations, but also through possible future laws and regulations.*

With regard to services and investment, and within the limitations set out by the Agreement, in particular the reservations listed in Annex I and Annex II, CETA constitutes the most comprehensive trade agreement the EU has ever concluded. It contains commitments on both sides with regard to discriminatory measures and quantitative restrictions across all sectors as well as broad regulatory provisions on key sectors such as financial or telecommunication services.

The outcome for the EU in terms of access to the Canadian market is very significant. The clear and comprehensive listing of the reservations provides unprecedented transparency on existing measures, in particular at provincial level. Canada for the first time includes explicit provincial and territorial reservations, guaranteeing to EU service providers the benefit of the current market access, without risk of future restrictions different or additional to those listed, as well as the benefit of any future liberalisation that Canada may undertake. Canada also agreed to new liberalisation in some key sectors such as postal services, telecoms and maritime transport without transition periods. On the latter, Canada takes market access commitments on dredging and some feeder activities, which were limited to national operators under previous agreements. Through these 'Annex I' reservations in many sectors,

EU businesses will also benefit if the measures are relaxed or eliminated vis-à-vis another Canadian trading partner in the future and they will receive automatically the same treatment.

With respect to the Investment Canada Act, which allows the Canadian government to screen acquisitions of Canadian companies by non-Canadians for “net benefit” to Canada (that is, for economic reasons rather than, as usual for all countries, only for national security reasons), Canada has agreed to increase substantially the threshold for review from the current C\$354 million to C\$1.5 billion (applying to all EU investors other than those that are state-owned enterprises).

As regards financial services, Canada guarantees to EU financial service providers that its existing framework will not become more restrictive with regard to the provision of cross-border insurance, reinsurance and intermediation, as well as portfolio management services. Furthermore, Canada has taken commitments regarding its “widely held” regime so that EU investors can continue to control their investments in financial institutions in Canada, reflecting and guaranteeing the continuation of existing Canadian practice.

The EU guarantees to Canadian service providers its current level of liberalisation in many sectors through Annex I reservations. Canada benefits, in particular, from commitments in areas like mining, certain services related to energy, environmental services and certain professional services. For critical and sensitive areas or sectors, however, CETA safeguards the ability of the EU and Member States to introduce discriminatory measures or quantitative restrictions in the future by specifying these areas or sectors in the reservations of Annex II. This flexibility concerns, among others, public monopolies and exclusive rights for public utilities that the EU and its Member States will be able to operate at all levels of government, including the local level. Public utilities cover a wide range of sectors, such as, for example waste management or public transport. The flexibility provided by Annex II reservations also concerns public services such as education, health, social services and water supply. CETA contains no obligation to privatise any of these sectors. Beyond that, CETA explicitly allows a government in a Member State to reverse in the future at any time any autonomous decision it may have taken to privatise these sectors.

With regard to the supply of a service through the temporary presence of natural persons (‘Temporary Entry’), the agreement contains important provisions, notably for intra-corporate transferees, that will facilitate the activities of both European and Canadian professionals and investors. Whenever investment is liberalised, inter-corporate transferees are guaranteed access. Furthermore, both Canada and the EU undertake to allow companies to post their intra-corporate transferees to Canada for up to 3 years regardless of their sector of activity. In addition, the agreement guarantees for the first time that intra-corporate transferees may be accompanied by their spouses and families when temporarily assigned to subsidiaries abroad. Natural persons, who provide a service as so called ‘contractual service suppliers’ or ‘independent professionals’ will be able to stay in the other party for a period of 12 months instead of 6 months as was the rule so far.

CETA reflects a very extensive and comprehensive set of mutually binding disciplines with respect to domestic regulation ensuring fairness, equitable treatment with domestic suppliers and transparency for licensing and qualification regimes.

CETA also establishes a framework for the mutual recognition throughout the territories of the EU and of Canada of professional qualifications and determines the general conditions and guidelines for the negotiation of profession-specific agreements (agreements on the mutual recognition of professional qualifications (MRAs), typically in regulated professions such as e.g. architects or lawyers). When such specific MRAs are concluded, European professionals would have their qualifications recognized by the competent authorities in Canada. The same applies the other way round.

### **(8) Investment protection and Investor-to-State-Dispute Settlement (ISDS)**

*CETA reflects a turning point in the European approach to investment policy. It is the first agreement that puts all EU investors on the same footing. More importantly, it is also the first agreement to introduce important innovations in this field, ensuring a high level of protection for investors while fully preserving the right of governments to regulate and pursue legitimate public policy objectives such as the protection of health, safety, or the environment. The most progressive system to date is also being established for Investor-to-State Dispute Settlement (ISDS). CETA represents a significant break with the approach to investment protection and ISDS in most of the existing bilateral investment treaties worldwide, first in respect of the clarity of the applicable standards for the protection of investors, removing ambiguities that made these standards open to abuses or excessive interpretations; second in respect of the transparency, fairness and impartiality of the arbitration process.*

First, the agreement defines clearer and more precise investment protection standards (i.e. the rules) that arbitration tribunals will apply. It provides a precise definition of the Fair and Equitable Treatment standard, incorporating a closed list of the elements that could give rise to a violation of this standard. The objective of this innovation is to avoid wide or abusive interpretations and give clear guidance to tribunals. CETA also incorporates an Annex on Indirect Expropriation that defines what situations constitute an indirect expropriation. This ensures that a measure by a public entity will only be considered equivalent to expropriation when its effect on the property of an investor is essentially the same as that of a direct expropriation measure (which remains *per se* lawful, provided it is in the public interest and accompanied by adequate compensation, as it is the case under domestic law everywhere in the EU). In particular, non-discriminatory measures of general application taken for legitimate public objectives, for example in the areas of labour, health or environment, cannot be considered equivalent to expropriation, unless they are so manifestly excessive in light of their objective that they take away the investor's property (in which case the measures can still be taken, against adequate compensation). It is important to note that all investors in the EU already enjoy the same or higher guarantees under EU law and the laws of the Member States. In this respect, CETA provides basic guarantees to Canadian investors in the EU, but not a higher level of protection. It obtains equivalent guarantees for EU investors in Canada.

Second, CETA also provides for new and clearer rules on the conduct of procedures in arbitration tribunals. These include complete transparency – all documents submitted will be publicly available, all hearings will be open to the public and all interested parties will be able to make submissions. Business confidentiality will be ensured within the normal boundaries also applicable before domestic courts. Important changes are also made to the way in which

the arbitral tribunals will actually function. The objective of these changes is to remove the risk of multiple proceedings and to give the Parties to CETA more control over the manner in which the treaty is interpreted. Significant innovations are also made with the introduction of a new system for choosing arbitrators. Strict and enforceable rules on ethics ensure that arbitrators have the necessary impartiality, expertise and knowledge to manage cases that could potentially be sensitive.

For more information, see the dedicated factsheet on [investment protection and ISDS](#).

The application of the investment protection chapter to financial services is subject to some specific adaptations. CETA preserves the ability of regulators on both sides to take genuine prudential measures where this is warranted, while leaving the possibility to investors to challenge through investor-to-state dispute settlement regulatory action, which does not have a mutually recognised prudential character.

The improved system of investment protection and investor-to-state dispute settlement included in CETA would ultimately replace the 8 existing bilateral investment agreements between EU Member States and Canada, which follow the approach common to most bilateral investment treaties in the world, and which has given rise to serious concerns as to both transparency and abusive or excessive restrictions on public authorities in their relations with foreign investors.

### **(9) Government Procurement**

CETA achieves a very positive result, fully in line with the EU interests and negotiation requests, in respect of public procurement. For the first time, Canadian provinces, territories and municipalities will open their procurement to a foreign partner, going well beyond what Canada has offered in the GPA (the multilateral Government Procurement Agreement) or under NAFTA. In fact, the Canadian offer for access to the procurement markets is the most comprehensive Canada has made thus far to a third country, including the US. The CETA procurement chapter eliminates a major asymmetry between the EU and Canada, given that the EU was *de facto* already open to Canadians, including at the sub-federal level, while in Canada the access for foreigners was very limited. The Canadian commitments now cover the procurement of federal entities, provincial and territorial ministries and most agencies of government as well as "crown corporations" (i.e., state-owned corporations that are administered "at arms length" from the government), and regional, local and municipal governments and entities. The EU guarantees (now in law as well as in fact) to Canadian suppliers reciprocal access to the European procurement market.

There are only two areas in two Provinces among the main sectors of EU interest where Canada - while still making the best offer ever to a partner –has kept some limitations. The first is with regard to the coverage of energy utilities in the Provinces of Ontario and Québec, where certain specific types of contracts are excluded from the commitments. However, the agreed coverage of entities, as well as of goods and services of interest to the EU in both Provinces is very satisfactory nevertheless and, in spite of these limitations, still allows EU

bidders an unprecedented access to the procurement of the energy entities in Ontario and Québec.

The second area is public transport. With CETA, the government procurement market access for European rolling stock in the Canadian Provinces and Territories will be unlimited, with the exception of Ontario and Québec which also open their market to EU bidders, but keep some conditions. Both Provinces had enforced so far high local content requirements, making it non-viable for potential suppliers from outside of their territory to participate in provincial or municipal tenders for public transport vehicles. The agreed solution significantly lowers and simplifies these requirements and limitations, giving European bidders of rolling stock for the first time important preferential access to Ontario and Québec<sup>6</sup>. This significant additional flexibility will provide European operators with meaningful access to the market of rolling stock for public transport also within these two Provinces. Moreover, the agreement reached provides legal certainty, as in the past, Ontario and Québec imposed “local content” requirements based on established practice rather than any law or regulation.

As far as the “rules” part of Government Procurement in CETA is concerned (for example the rules governing the procurement procedures, transparency and information, eligibility, administrative and judicial remedies), the text is based on provisions derived from the GPA. There is additional detailed wording on a single electronic procurement website, which corresponds to existing intra-EU arrangements, and would greatly facilitate the effective access of firms, especially small and medium sized enterprises, to procurement opportunities in Canada.

### **(10) Intellectual Property Rights (IPR)**

The Chapter on IPR builds on the provisions of WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Besides provisions on copyright<sup>7</sup>, trademarks and designs, one of the main results concerns intellectual property rights for pharmaceuticals. The EU has delivered on the three requests put forward by Member States and EU stakeholders, addressing a current asymmetry in the level of protection in the EU and in Canada: (i) innovators holding a pharmaceutical patent will

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<sup>6</sup> In particular, both Provinces have accepted the replacement of the “local content” requirement by a more flexible “local value” condition which allows the European bidder not only to take into consideration the value of parts and components (as would be the case with a ‘local content’) but also labour costs linked to the assembly of the final product and services, such as maintenance or after sales.

<sup>7</sup> Canada put itself in line with the WIPO Internet Treaties and agreed to protect better European artists’ rights by providing performers the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances. Furthermore, Canada will ensure that a single equitable remuneration will be paid for broadcasting by wireless means or for any communication to the public, and this remuneration will be shared between the relevant performers and phonogram producers.

obtain the right to appeal marketing authorisation decisions in Canada with no discrimination between producers of generic drugs; (ii) Canada has confirmed and guaranteed to the EU its current regime of data protection (6+2 years); (iii) Canada will put in place a patent term restoration system ('sui generis protection') along the lines of the EU Supplementary Protection Certificate (SPC) system (although with – as part of the compromise – a shorter period of supplementary protection (2 years) than is foreseen in the EU (5 years) and the possibility for each Party to provide exceptions for the purpose of export to third countries). Overall, this creates for research-based pharmaceutical products a level of protection of their intellectual property closer to that existing in Europe.

Canada also agreed to strengthen its border measures against counterfeited trademarks, pirated copyright goods and counterfeit geographical indication goods, also moving its protection of these rights closer to that existing in Europe.

In CETA, the EU and Canada re-affirm the rights and obligations of the Doha Declaration on the TRIPS Agreement and Public Health of 14 November 2001 on the access to medicines for developing countries. CETA does not limit the ability to export generic medicines to developing countries, and foresees explicitly that the Parties can exempt exported generic medicines from the additional obligations agreed in CETA.

### **(11) Geographical Indications**

Another positive result is the outcome on the protection of the designations of the high quality agricultural products of the EU, through the legal protection of Geographical Indications (GIs). Canada has accepted that all types of food products proposed by the EU will be protected at a comparable level to that offered by EU law, and that additional GIs can be added in the future. This will make a real economic difference for European producers of these products and will benefit in particular the small and medium sized companies active in this field.

Canada has granted the highest level of protection to the great majority of our proposed list of 145 names<sup>8</sup>, with the partial exception of 21 names, which conflicted with names already in use in Canada. In these cases, we have found tailor-made solutions:

- 5 EU GI names (*Canards à foie gras du Sud-Ouest (Périgord)*, *Szegedi téliszalámi/Szegedi szalámi*, *Prosciutto di Parma*, *Prosciutto di S. Daniele*, *Prosciutto Toscano*) conflicting with prior Canadian trademarks will coexist with these existing trademarks. This solution is a good result for the EU. It establishes for the first time in a "common law" country like Canada a deviation from the principle "first in time first

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<sup>8</sup> i.e. the use of a GI name is prohibited even when the true origin of the product is indicated or in translation or with an expression such as "kind", "type", "style", "imitation" or the like – this corresponds to the treatment reserved by Article 23 TRIPS to wines and spirits,)

in right". In fact, up to now, the use of the original EU GI could have been deemed unlawful in Canada because of the conflict with the Canadian trademark;

- 8 names will be protected as GIs, but the use of English or French translations of these terms<sup>9</sup> will be allowed, if the use does not mislead the consumer about the true origin of the product;
- For another three EU GIs (*Nürnberger Bratwürste*, *Jambon de Bayonne* and *Beaufort*), the solution involves grandfathering the use of these names by certain existing producers, coupled with a phase-out period for others. This means that those producers who already had products using these names on the market for a certain number of years, before a certain cut-off date, may remain on the market. Those who have used the names for a shorter period prior to the cut-off date will be given a transitional period to phase out their production within an agreed number of years. Regarding Beaufort, producers in the proximity of the geographical place called "Beaufort Range" on Vancouver Island, but not beyond that small area, may continue using the name;
- Canada will also protect the names of five cheeses of particular importance (*Asiago*, *Gorgonzola*, *Feta*, *Fontina*, and *Munster*) which had been considered as not deserving any protection in Canada so far. The use of these EU GIs will now be protected in Canada with an exception for the existing use by products already present on the Canadian market ('grandfathering'). New entrants to the Canadian market, instead, will only be able to sell their product under these 5 names where they are accompanied by indications such as "style", "type", "kind", or "imitation". This is a compromise solution, but one that achieves the result that Canada recognises that these names are protected GIs. This solution protects the market position of our producers by clearly distinguishing such products from the original product. This will allow Canadian consumers to clearly identify, for example, genuine Feta.
- Finally, we have obtained protection for all the listed EU GIs from attempts to mislead the consumer as to the true origin of the product, or into believing that a product is the original EU product when in fact it is not. Hence, the misleading use of flags and other symbols evoking a protected EU GI and the country where that GI product comes from will be prohibited, and all products must have an accurate and visible indication of their true origin. These conditions are strengthened further by the possibility for EU rights holders to have recourse to an administrative process to uphold GI rights rather than only through the domestic court system.

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<sup>9</sup> Black Forest Ham/Jambon Forêt noire, Tiroler Bacon, Parmesan, Bavarian Beer/Bière Bavaroise, Munich Beer/Bière Munich, St George, Valencia orange, Comté /County in association with Canadian names of counties.

**(12) Trade and Sustainable Development**

Both Parties have traditionally negotiated provisions on trade and labour as well as environmental issues in connection with their FTAs. However, Canada's approach was to negotiate separate side-agreements, whereas the EU's long standing practice is to bring these issues within a broader sustainable development framework that is made an integral part of its FTAs. In CETA, the EU has persuaded Canada to bring both areas within a common sustainable development framework, establishing equally ambitious rules for labour- and environment-related aspects. Building on the EU approach, CETA contains substantive provisions in areas including:

- commitments to international standards and agreements: on the labour side, these commitments include the respect of the International Labour Organisation (ILO) core labour standards, other labour rights such as health and safety at work, and the ratification and implementation of the fundamental ILO Conventions. On the environmental side, commitments to the effective implementation of Multilateral Environmental Agreements;
- protection of the right of each Party to regulate in the areas of labour and environment as each deems necessary or appropriate, while providing for high levels of protection;
- guarantees that labour and environmental standards are not misused in a trade context, both as a form of disguised protectionism or by relaxing domestic labour and environmental laws or their implementation to encourage trade and investment unfairly;
- engagements to promote the sustainable use and trade of natural resources such as forest and fish products;
- promotion of trade and investment practices supporting sustainable development objectives, such as Corporate Social Responsibility – where specific reference is made to the OECD Guidelines for Multinational enterprises – and sustainability assurance schemes, such as eco-labelling and fair trade;
- strong monitoring and a high degree of transparency, including involvement of civil society;
- procedures for the resolution of any disagreement based on government consultations and an independent third-party review mechanism, based on panel of experts whose reports are public and require follow-up.

Implementation will be overseen by a dedicated governmental body and carried out with the involvement of civil society both domestically and on a bilateral basis. A dedicated binding mechanism to address disputes, including review by an independent panel of experts and a high degree of transparency and monitoring, is established.

**(13) Other areas**

The agreement will also include provisions on NTBs (Non-tariff barriers) on cars, good manufacturing practices on pharmaceutical products, competition, SOEs (State Owned Enterprises), Trade Defence as well as state-to-state Dispute Settlement. Amongst these, the following achievements are worth highlighting:

NTBs - Car standards

Canada has agreed to recognise a number of current UN-ECE standards, accompanied by a forward looking work programme towards regulatory convergence, also taking into account possible EU negotiations with the US. This is the first time that one of our North American partners recognises the equivalence of a number of UN-ECE car standards, which the EU has adopted as its own standards.

State Enterprises, Monopolies and Enterprises granted special rights

CETA will include a chapter on state enterprises, monopolies and enterprises granted special or exclusive rights or privileges, confirming the mutual objective to ensure that the disciplines of CETA are not circumvented and market access effectively denied through the activities of such enterprises. The Parties retain the right to set up such enterprises without limitation and for whatever purpose they deem appropriate, but undertake to ensure that, when they operate in the market (as opposed to pursuing a public interest purpose, for example as a public service), they follow commercial considerations and non-discrimination, thus ensuring that there is a level playing field and that commercial activities are not distorted.

Appropriate carve-outs are foreseen to ensure that these disciplines do not affect the commitments and exceptions agreed for public procurement and in the services and investment schedules of reservations. Notably, the carve-outs ensure that public authorities in the EU and Canada maintain the right to resort to public monopolies or enterprises granted special rights in order to provide public services and guarantee that the market access reservations for public services (see point (7)) are not affected.

Culture

Culture, and in particular audio-visual services, has a particular status in our societies. CETA reaffirms the right of both the EU and Canada to take measures to preserve and promote cultural diversity and both sides confirm in CETA their commitment to the UNESCO convention on the protection and promotion of the diversity of cultural expressions. In particular, CETA will in no way restrict the ability of Governments to subsidise cultural activities. Furthermore, the audio-visual sector has been, as prescribed in the negotiation mandate of the Council of the European Union, entirely excluded from any disciplines and any liberalisation commitments.

### State-to-state dispute settlement mechanism

CETA provides for an efficient and streamlined mechanism covering most areas of the Agreement. The system is intended as a last resort should the parties fail to resolve disagreements relating to the interpretation and implementation of the Agreement's provisions by other means (notably consultation and mediation). It proceeds along an agreed set of procedures and time frames. Should parties fail to reach an agreement through formal consultations, they can request the establishment of a panel, made up of independent experts.

### Mediation

A mechanism for mediation is also available on a voluntary basis to tackle measures that adversely affect trade and investment between the parties.

### Conclusion

Canada is a sizeable market with high purchasing power and is the most developed economy with which the EU has negotiated an FTA thus far. The overall deal represents an excellent outcome of significant economic value to European companies, consumers and households.

CETA is a balanced agreement that will restore the level playing field for European operators in Canada in comparison to its NAFTA (North American Free Trade Agreement) partners, which have benefited from preferential treatment in Canada since 1994. CETA even goes beyond this, for example on services market access and in particular on government procurement, where the opening to European bidders is unprecedented. The outcomes on geographical indications, on patents or on market access for ships and certain maritime services have never been granted before by Canada to a trading partner. On investment protection and on the mutual recognition of professional qualifications, the EU and Canada have broken new ground in creating effective rules to facilitate economic activities, without affecting their ability to regulate these activities in the public interest. In the first case, they innovated by improving the current system, clarifying the rules and making it more transparent, in the second by providing a framework that can give new opportunities to professionals.

While providing very comprehensive liberalisation of trade and investment and significant new opportunities for businesses and professionals, the EU and Canada also place a strong emphasis on the highest standards of sustainable development, on cultural diversity, and on the right to regulate in the public interests within their territories. Like in all trade agreements, the EU does not take any commitments with regard to public services.