



**HOUSE OF COMMONS
CANADA**

**NEGOTIATIONS TOWARD A COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT (CETA)
BETWEEN CANADA AND THE EUROPEAN UNION**

**Report of the Standing Committee on
International Trade**

**Hon. Rob Merrifield, P.C., M.P.
Chair**

MARCH 2012

41st PARLIAMENT, 1st SESSION



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has the honour to present its

FIRST REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied the Comprehensive Economic and Trade Agreement (CETA) with the European Union and has agreed to report the following:

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NEGOTIATIONS TOWARD A COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA) BETWEEN CANADA AND THE EUROPEAN UNION

INTRODUCTION

Composed of 27 member states¹ with a total population of more than 500 million individuals and a gross domestic product (GDP) of more than \$16 trillion in 2010, the European Union (EU) is the world's largest single market. As an integrated bloc, the EU is Canada's second-largest trading partner in goods and services, as well as its second-largest source of, and destination for, foreign direct investment. Furthermore, Canada and the EU have long-standing cultural, linguistic and historical links.

In May 2009, Canada and the EU announced the launch of negotiations toward a comprehensive economic and trade agreement (CETA). The first formal round of negotiations took place in October of that year; since then, formal negotiating rounds have taken place quarterly. According to Canadian and EU officials, the two sides aim to conclude negotiations in 2012.

In addition to trade liberalization, the Canada-EU CETA negotiations include a number of other subjects with the potential to increase economic integration between the two parties, such as investment protection, government procurement and labour mobility.

Committee mandate and procedure

On September 27, 2011, the House of Commons Standing Committee on International Trade (hereinafter the Committee) decided to conduct a study on the Canada-EU CETA negotiations. The Committee's primary objective was to ensure that an agreement, once signed and implemented, would be in the best interests of Canadians.

Against this background, the Committee held hearings in Ottawa in October and November in order to obtain input from Canadian stakeholders with regard to the principal issues in these negotiations. Half of the Committee members then travelled to Brussels and Paris in December to meet with European parliamentarians, representatives of national governments, and stakeholders that are involved or have an interest in the negotiations. The objective was to gain a broader understanding of the benefits and

1 Croatia is set to become the 28th member state of the European Union on July 1, 2013.

challenges associated with the negotiations, and to highlight Canada's priorities in the negotiations.

Committee members who travelled to Europe benefited from briefings and logistical support provided by Canada's Mission to the EU as well as by the Canadian embassies in Belgium and France.

Structure of the Report

This report summarizes the issues under consideration in the Canada-EU CETA negotiations, describes the Committee's meetings in Brussels and Paris, and makes recommendations to the government. The report covers two major themes: the negotiation process and the expected outcome of a Canada-EU CETA. In terms of the expected outcome, the following topics are examined: trade in goods, trade in services and labour mobility, investment protection, government procurement and intellectual property rights.

BACKGROUND

Trade relations between Canada and the European Union²

The EU is Canada's second-largest trading partner, after the United States. In 2010, Canadian exports of goods and services to the EU totalled \$49.1 billion and Canadian imports from the EU totalled \$55.2 billion.

The EU is growing in importance as a trading partner for Canada, particularly as an export destination. From 2005 to 2010, the value of Canadian exports to the EU rose at an average rate of 6.7% per year, a rate higher than the average annual decline of 1.8% in Canadian exports worldwide.

In 2010, Canada's top exports to the EU included gold, aircraft, diamonds, uranium and iron ore, while the main imports into Canada from the EU were pharmaceutical products, crude and light oil, motor vehicles and wine.

Ontario and Quebec were the two largest provincial exporters to the EU in 2010, with total exports valued at \$17.2 billion and \$7.9 billion respectively.

2 All data in this section are from Statistics Canada.

With regard to trade in the services sector, Canada-EU services trade in 2010 totalled \$28.0 billion, comprised of \$12.9 billion in Canadian services exports to, and \$15.1 billion in services imports from, the region. Canada was a net importer of travel services as well as of transportation and government services from the EU in 2010. However, in the same year, Canada had a trade surplus with the EU in the commercial services sector.

As is the case with trade in goods and services, the EU is Canada's second-largest source of, and destination for, foreign direct investment, after the United States. The stock of Canadian direct investment in the EU totalled \$145.7 billion in 2010, accounting for 23.6% of all Canadian direct investment abroad. Similarly, the stock of direct investment in Canada from the EU was valued at \$148.7 billion in 2010, which represented 26.5% of all foreign direct investment in Canada.

In terms of trade in goods and services as well as investment, the United Kingdom remained Canada's most important partner within the EU in 2010. Two-way trade in goods and services between Canada and the United Kingdom totalled \$35.3 billion, while two-way direct investment totalled \$112.3 billion, in that year.

Negotiation history

At the 2007 Canada-EU Summit in Berlin, the two parties agreed to conduct a joint study examining the costs and benefits of pursuing a closer economic partnership, with special attention to the potential impact of eliminating the existing barriers, particularly non-tariff barriers, to the flow of goods, services and capital between Canada and the EU.

The results of the joint study were released on October 16, 2008 in a report entitled *Joint Study on Assessing the Costs and Benefits of a Closer EU-Canada Economic Partnership*. Because the joint study demonstrated that a Canada-EU trade liberalization agreement would benefit both sides, Canada and the EU began identifying the specific subjects to be covered in formal negotiations. The results of that scoping exercise were released in March 2009 in the *Canada-European Union Joint Report: Towards a Comprehensive Economic Agreement*. The joint report outlined a broad CETA negotiating agenda that included trade liberalization and other measures promoting increased economic integration between the two parties.

On May 6, 2009, at the Canada-EU Summit in Prague, Czech Republic, Canada and the EU announced the launch of formal negotiations toward a CETA. Since then, nine negotiating rounds have taken place.

Although the scope of trade agreements negotiated by Canada has not in the past included sub-national governments, a Canada-EU CETA would likely change this approach if the two parties reach an agreement. In fact, the EU has insisted from the outset that the Canadian provinces³ and territories be covered by the agreement.

NEGOTIATION PROCESS

A trade liberalization agreement between two or more states can be a complex process that may take a number of years to complete, especially if the agreement covers a wide range of issues, as is the case with the discussions aimed at reaching a CETA between Canada and the EU. In this context, many with whom the Committee met in Ottawa and Europe agree that, under the circumstances, the ongoing negotiations are progressing at a fast pace. Although the deadline for reaching an agreement was initially set for late 2011, it has been changed to 2012. With regard to the deadline, Steve Verheul (Chief Trade Negotiator, Canada-European Union, Department of Foreign Affairs and International Trade) said:

On the deadline of finishing negotiations by 2012, we do feel this is quite realistic. We had a discussion in Brussels last week with my counterpart, and he is of the same view. The Europeans want to move very quickly on this negotiation to finish it, as do we. So after the October round, we will be entering into an even more intensive phase of the negotiations, aimed at reaching agreement on most of the major issues by the first couple of months of next year.⁴

Throughout its meetings in Europe, the Committee heard that the current sovereign debt crisis in Europe is unlikely to have an adverse effect on the negotiations under way to reach a CETA with Canada. In fact, a number of participants told Committee members that trade is a key element in the strategy for recovering from the crisis and that a trade liberalization agreement with Canada would be a major achievement in implementing such a strategy. The Committee also learned that Denmark, which has held the six-month rotating Presidency of the Council of the European Union since January 1, 2012, has made the signing of bilateral trade agreements with key partners, including Canada, a priority for stimulating growth and employment in the EU.

Consultations

The issue of stakeholder consultations regarding the ongoing Canada-EU CETA negotiations was raised on a number of occasions at meetings in Ottawa and in Europe.

3 Participation of municipalities in trade agreements occurs indirectly, since provincial legislatures make laws in relation to municipalities in accordance with subsection 92(8) of the *Constitution Act, 1867*.

4 *Evidence*, Meeting No. 5, October 6, 2011.

While there is no consensus, the majority of witnesses heard by the Committee agree that the Canadian government's consultation mechanism is inclusive. They feel that they are regularly consulted and that their views are given sufficient consideration. On the issue of consultations, Jacques Pomerleau (President, Canada Pork International) stated: "We really appreciate having been consulted since the very beginning of the negotiations and being kept apprised of all the latest developments pertaining to our products."⁵

The participation of Canadian provinces and territories in the negotiations to reach a CETA with the EU was discussed on a number of occasions. Although Canada's Constitution gives the federal government sole jurisdiction over the regulation of trade and commerce, the negotiation of trade agreements that are more comprehensive than those signed in the past makes it more likely that commitments will be made in areas of shared federal-provincial or territorial jurisdiction or in areas of provincial or territorial jurisdiction.

Greater participation by the provinces and territories makes the negotiation process more complex because of the level of coordination involved in developing the Canadian position. That said, cooperation should make it possible to avoid a situation in which a province or territory is opposed to the text of an agreement and would jeopardize the implementation of some of the clauses in the agreement.

Because European negotiators want a CETA with Canada to include government procurement at the provincial, territorial and municipal levels and have made it a priority, consultation with the various levels of government in Canada is of even greater importance. Don Downe (Chair, Standing Committee on Finance and Intergovernmental Relations, Federation of Canadian Municipalities) is of the view that the Canadian government understands the position of Canadian municipalities regarding the CETA negotiations with the EU. According to Mr. Downe, municipalities support free and fair trade between Canada and its trading partners, but any trade agreement with the EU must respect and protect municipal autonomy and decision-making.

On that point, the Minister of International Trade told the Committee that he attended a meeting with the National Board of Directors of the Federation of Canadian Municipalities (FCM) in Nelson, British Columbia to discuss the Canada-EU CETA negotiations and assured them that he was very sensitive to their particular concerns.

In his testimony, Stuart Trew (Trade Campaigner, Council of Canadians) told the Committee that some Canadian municipalities have nonetheless adopted a more critical stance toward Canada-EU CETA negotiations.

5 *Evidence*, Meeting No. 11, November 15, 2011.

During its meetings in Europe, the Committee noted that the EU faces a similar situation, as the European Commission has a mandate to represent the interests of 27 different countries. The representatives of national governments with whom Committee members met said that they have been adequately informed by the European Commission during the ongoing negotiations and explained how the Trade Policy Committee operates: the representatives of the Directorate General for Trade of the European Commission provide weekly updates for the 27 member states on matters relating to trade.

That said, the EU member states are not involved directly in the negotiations because they have authorized the European Commission to negotiate on their behalf. The Committee noted that the Canadian provinces and territories play a more proactive role than do the EU member states in the ongoing negotiations toward a CETA between Canada and the EU.

Ratification and implementation of a comprehensive economic and trade agreement

The issue of the ratification and implementation of any CETA, both in Canada and in the EU, was raised several times during the Committee's meetings in Europe. In terms of the process in the EU, the Committee learned that the ratification of a CETA with Canada will depend on the agreement's scope. If the agreement deals solely with matters over which the EU has exclusive jurisdiction, ratification will follow the normal legislative procedure, under which a bill must be passed jointly by the European Parliament and the Council of the EU, which is comprised of ministers from the 27 member states.

In the event of a "mixed agreement" (one with some provisions falling under EU jurisdiction and some under member state jurisdiction), in addition to the normal legislative procedure at the European level described above, ratification of the agreement by each of the 27 EU member states will be required. The EU member states would thus have a greater influence on the outcome of the negotiations in the second scenario.

Some of the European participants raised the possibility that the issues between Canada and the EU that are not covered by the negotiations could nonetheless have an impact on the ratification of an agreement in the European Parliament or by the parliaments of European member states. The seal hunt, genetically modified organisms (GMOs) and Canada's imposition of visas on nationals from certain European member states were cited as examples. That said, members of the European Parliament (MEPs), including some members of the European Parliament Committee on International Trade, said that such issues are unlikely to affect the ratification of a Canada-EU CETA by the European Parliament.

The Committee also noted that the negotiations toward a CETA between Canada and the EU have the support of the main political groups represented in the European Parliament, including the Group of the European People's Party and the Group of the

Progressive Alliance of Socialists and Democrats, which together account for more than 60% of the members of the European Parliament.

Given Canada's level of social and economic development, the European MEPs with whom the Committee met believe that a CETA between Canada and the EU would obtain the consent of the European Parliament in due course. The EU-South Korean free trade agreement was cited as an example in this regard. That agreement was the first opportunity for the European Parliament to test its new legislative powers relating to trade policy since the Lisbon Treaty came into effect. Despite the initial differences of opinion on its content, that agreement was ultimately adopted by the European Parliament on February 2, 2011, with 465 votes in favour, 128 votes against and 19 abstentions.

On the subject of implementation of a Canada-EU CETA in Canada, the issue of the application of an agreement's clauses at the provincial and territorial level was raised on several occasions by European participants. On this point, the Committee noted that, under the Canadian Constitution, the federal government is fully responsible for the implementation and application of international treaties, but that when Canada incurs obligations in an agreement that fall under provincial or territorial jurisdiction, it is incumbent upon the provinces and territories to fulfill these obligations.⁶

The Committee pointed out to European representatives that, in the past, meeting the obligations that fall under provincial or territorial jurisdiction has not been a problem for Canada. Furthermore, an extensive consultation process has been established to ensure that provincial and territorial legislation is given due consideration in the development of Canada's negotiating positions.

EXPECTED IMPACT OF A CANADA-EU CETA

The majority of Canadian witnesses were in favour of negotiations toward a CETA between Canada and the EU, and held the opinion that the impact of an agreement would be positive. On the basis of the joint study on the costs and benefits of a CETA between Canada and the EU that was released prior to the commencement of negotiations, the Minister of International Trade noted that the agreement would have the potential to add \$12 billion per year to Canada's economy and to boost bilateral trade by \$38 billion, an increase of 20%. The Minister also stated: "[...] a free trade agreement with the EU would

6 The federal government cannot enforce compliance with international treaties in areas beyond its jurisdiction. Whenever a treaty concerns an area of provincial jurisdiction, the relevant provisions may be implemented only by the provincial legislative assemblies. Ultimately, however, as the provinces and territories are not signatories to international trade agreements, it falls to the federal government to defend its own actions but also those of the provinces and territories in the event of a dispute arising from such agreements.

mean an increase of almost \$1,000 in the average Canadian family's income, not to mention the 80,000 new Canadian jobs that are expected to be created.”⁷

Furthermore, representatives of the Department of Foreign Affairs and International Trade (DFAIT) felt that the joint study likely underestimates the expected benefits for Canada because one of its assumptions is that the World Trade Organization (WTO) Doha Round negotiations will have been successfully concluded before a CETA between Canada and the EU came into effect. With those negotiations at an impasse, the benefits that Canada would derive from a CETA with the EU could be even greater, as Canada would have a greater advantage in the European marketplace in comparison with other trading partners that have not signed a preferential trade agreement with the EU.

The Committee was told that, of all the trade negotiations entered into by Canada, including the *North American Free Trade Agreement* (NAFTA), the Canada-EU CETA negotiations are likely to have a greater impact on Canada. According to Milos Barutciski (Partner and Co-Chair, International Trade and Investment Practice, Bennett Jones, Canadian Chamber of Commerce), who was involved in the NAFTA negotiations when he was employed as a federal public servant, a Canada-EU CETA would surpass NAFTA in its ambition and would have an even greater positive impact for Canada. Mr. Barutciski acknowledged, however, that certain sectors would face a more difficult transition than others following the entry into force of a CETA between Canada and the EU.

According to some of the Committee’s witnesses, a CETA with the EU would provide an opportunity for Canada to diversify its trade relationships. According to Roy MacLaren (Canadian Chairman, Canada Europe Roundtable for Business), the Canadian economy relies so heavily on exports that it is not advisable to be dependent on a single market, as Canada currently is on the United States market. That said, the Committee also takes note of the fact that DFAIT has affirmed the importance of the United States as Canada’s most important trading partner.

In the same vein, Jean-Michel Laurin (Vice-President, Global Business Policy, Canadian Manufacturers & Exporters) said:

The conclusion of the CETA has the potential to help Canadian manufacturers and exporters diversify their sales into new export markets, to increase their presence in Europe at a time when they are looking for new business opportunities, and to position Canada as a more attractive destination for manufacturing investment by giving Canadian companies privileged, duty-free access to the two largest markets in the world, that is, the European Union and the United States.⁸

7 *Evidence*, Meeting No. 5, October 6, 2011.

8 *Evidence*, Meeting No. 6, October 18, 2011.

The Committee was also told that, in light of the international economic situation, specifically the sovereign debt crisis in a number of European countries and the economic slowdown in the United States, there could well be a protectionist response in these regions. In that regard, Sam Boutziouvis (Vice-President, Policy, International and Fiscal Issues, Canadian Council of Chief Executives) said that successful negotiations between Canada and the EU toward a CETA could send a strong growth signal to investors and businesses in Canada and abroad.

While most of the Committee's witnesses in Canada were optimistic about the benefits of a CETA with the EU, some of them felt that an agreement between Canada and the EU should not be concluded at the expense of the government's power to regulate. In this regard, the Minister of International Trade said:

[...] we're committed to preserving government powers and abilities to regulate. Canadian products, services, and commercial expertise are for sale. Our government's powers and ability to regulate are not. Foreign companies doing business in Canada, as always, must comply with all our laws and regulations.⁹

Other witnesses, however, were more pessimistic about the overall impact of a Canada-EU CETA. Scott Sinclair (Senior Research Fellow, Canadian Centre for Policy Alternatives) said that the average tariffs imposed by Canada and the EU on imports were already very low and that there were very few traditional trade barriers between Canada and the EU. He felt that reducing or eliminating these tariffs and obstacles would not result in much of a boost to the Canadian economy.

Stuart Trew was of the view that the CETA negotiations between Canada and the EU could compromise Canadian democracy. He said:

Since the negotiations began on this proposed Canada-EU comprehensive economic and trade agreement in 2009, we've come to understand CETA not as a simple trade deal but more broadly as an agreement on economic governance. CETA will set new legal limits on social and environmental policy in ways that compromise our democracy.¹⁰

In Europe, although the participants that the Committee met in Brussels and Paris shared their concerns about certain issues, they felt in general that a Canada-EU CETA would be advantageous for the EU.

The following sections provide a more in-depth discussion of the issues of particular interest for Canadians and Europeans raised during the Committee's meetings on a CETA between Canada and the EU.

9 *Evidence*, Meeting No. 5, October 6, 2011.

10 *Evidence*, Meeting No. 13, November 22, 2011.

Trade in goods

Like all trade liberalization negotiations, those for a Canada-EU CETA involve a number of measures aimed at increasing the flow of goods between the two regions, including the elimination of customs duties. However, for some witnesses, non-tariff trade barriers, such as divergent standards and regulations, appear to pose an obstacle to trade in goods between Canada and the EU that is just as significant as, if not greater than customs duties.

Access to agricultural markets is generally one of the most contentious issues in bilateral or multilateral trade negotiations. In light of what Committee members heard on issues such as GMOs, supply management and rules of origin, negotiations to reach a CETA between Canada and the EU are no exception. The Committee noted that trade liberalization in respect of some specific agricultural products is a sensitive issue for both Canada and the EU.

Because customs duties on most non-agricultural products from Canada and Europe are already relatively low, questions about these products did not raise major concerns during the Committee's hearing meetings in Ottawa and Europe.

The Canadian perspective

Because manufactured products¹¹ make up the majority of Canadian exports to, and imports from, the EU, the Committee noted that a CETA must take into account both the offensive and defensive interests of Canada's. Jean-Michel Laurin pointed out that:

We also expect the agreement to be ambitious with respect to tariff elimination, and we expect that tariffs in more sensitive areas will be phased out over timelines that provide Canada-based manufacturers the time they need to build capacity to take advantage of more open access to the European market, but also to adapt to changes in the domestic market that would result from an agreement.¹²

Although DFAIT representatives expected that a CETA with the EU would promote job creation in a number of Canadian sectors, they felt it is likely that more employment gains would be made in the manufacturing sector because of the preferential access an agreement would provide Canadian companies in the European market in comparison with other supplier countries, including the United States.

11 In 2010, manufactured goods represented 54.3% of the value of Canada's exports of goods to the EU and 89.9% of the value of Canadian imports from the EU.

12 *Evidence*, Meeting No. 6, October 18, 2011.

Furthermore, a CETA between Canada and the EU could be favourable to competitive Canadian businesses throughout the world in growth sectors such as sustainable development technologies. According to Vicky Sharpe (President and Chief Executive Officer, Sustainable Development Technology Canada), the EU represents a very large market for green technologies and a CETA would help Canadian clean technology companies to penetrate and to strengthen their presence in the European marketplace.

In terms of the agriculture and agri-food sector, most of the representatives from this sector told the Committee that they hope to have greater access to the EU marketplace as a result of a Canada-EU CETA. In view of the size of its marketplace, consumers' purchasing power and their similar tastes in food, the EU is seen as an important strategic market for the Canadian agriculture and agri-food sector.

Representatives from the hog and cattle sectors told the Committee that access to the European market for beef and pork products is extremely limited at the present time. John Masswohl (Director, Government and International Relations, Canadian Cattlemen's Association) pointed out that, even though the Canadian beef sector is not opposed to the European regulations prohibiting growth promotants, a CETA should provide unlimited and duty-free access to the EU market for Canadian beef products. Mr. Masswohl also asked that the protocol for demonstrating that Canadian beef conforms with the European requirements be the same as that used for American breeders who export their beef to the EU market.

For his part, Jacques Pomerleau expressed the hope that Canada would be able to negotiate a tariff exclusion with a Canada-only tariff rate quota for Canadian pork, with simplified administrative procedures for its allocation in the EU.

Increased production of beef and pork products in Canada as a result of greater access to the European marketplace would also be advantageous to Canadian grain growers, because pork and beef producers are major users of feed grains. Representatives of grain growers also argued in favour of simplifying certification procedures for Canadian grains in the EU and for a reasonable policy on the threshold level for the adventitious (accidental and non-intentional) presence of GMOs in a shipment of grain.

Derek Butler (Executive Director, Association of Seafood Producers) voiced a similar opinion when he asked for a complete and immediate elimination of tariffs on Canadian seafood in the EU market. At the same time, he asked that Canada be vigilant in ensuring that the elimination of tariffs did not result in a commensurate rise in other trade barriers.

Some witnesses were strongly opposed to Canada's position on supply management. They felt that the system currently in place in Canada is costly for the Canadian economy, and that the federal government's negotiating position on supply

management prevents Canadian negotiators from obtaining concessions from the EU in other sectors. However, Wally Smith (President, Dairy Farmers of Canada) told the Committee that the Canadian dairy industry is sustainable, creates rural activity, sustains jobs, and makes a contribution to the Canadian economy.

DFAIT representatives said that Canada and the EU agreed that both parties could make proposals on any sector of interest. That said, the Government of Canada has stated that it strongly supports supply management and that it will defend the supply management system with the same vigour as in all previous trade negotiations.

Finally, representatives from the Canadian forestry sector stated that their sector would benefit if a Canada-EU CETA eliminated the tariffs that still exist on certain Canadian products, such as oriented strand board and plywood products, and if it made the EU government procurement process for forest products more transparent.

Regardless of whether the products under discussion are agricultural, the Committee notes that the negotiations on the rules of origin are likely to be problematic. The EU has already expressed concerns that the United States could use a CETA with Canada as an indirect way of entering the European marketplace tariff-free. In light of the integration of the North American market and the reality that Canada and the United States produce a number of products (such as automobiles) together, a number of witnesses told the Committee that this state of affairs must be taken into consideration in negotiating a Canada-EU CETA in order to avoid a situation where goods produced in Canada were not considered as Canadian in the EU market.

The European perspective

During its meetings in Europe, the Committee noted that improved market access for trade in goods is not a priority for most of the participants it met. Discussions with European participants focused primarily on issues such as government procurement and intellectual property rights. That said, representatives from one EU member state told the Committee that improved access for automobiles to the Canadian market was one of their primary objectives in the negotiations under way to reach a Canada-EU CETA. Other EU participants mentioned dairy products, primarily cheeses, as being of offensive interest for the EU and raised concerns about the manner in which dairy products are marketed as well as the high customs tariffs on dairy products in Canada.

The Committee also discussed European agricultural subsidies and the EU's Common Agricultural Policy (CAP) with European and French parliamentarians, as well as with representatives from the agriculture and agri-food sector. The Committee was informed that the amounts paid under the CAP are now almost entirely decoupled from farmers' production levels, and that European farmers need financial support from the state because of the additional costs associated with European regulations. With regard to European regulations, European participants told the Committee that they are working to

ensure that a Canada-EU CETA would take the conditions of European farmers into consideration, and that Canadian exporters would have to be subject to the same regulations as them.

On the matter of GMOs, representatives from European national governments and from the French agriculture and agri-food sector said that the issue of GMOs is primarily political and that European public opinion is firmly opposed to the marketing of such products for human consumption. The Committee was told that it is unlikely that this position will change in the near future, even though some of the participants showed openness toward the use of GMOs in Europe.

The issue of rules of origin was raised by some of the European participants. They stated that the current negotiations toward a CETA are between Canada and the EU and not between North America and the EU. Consequently, they wanted to ensure that Canadian products that would benefit from improved access to the EU market under a CETA would have sufficient Canadian content.

Trade in services and labour mobility

The Canadian perspective

The Committee noted that Canadian services associated with Canadian products that are exported abroad add value to supply chains and represent a growing share of the economic activity of Canadian companies. A number of witnesses pointed out the importance of facilitating service delivery between Canada and the EU as part of the negotiations toward a CETA, of facilitating the movement of business people and workers between Canada and the EU, and of recognizing professional qualifications.

The Committee was told that Canada is well positioned in terms of trade in services with the EU in light of its trade surplus with the EU in professional services, which include primarily legal, architectural and engineering services. Increased access to the European marketplace could help strengthen Canada's existing position.

Other witnesses were concerned that European companies were trying to obtain access to the Canadian marketplace to deliver public services, such as waste management, public transit and drinking water. Scott Sinclair said:

Unconditional access to government procurement, particularly at the provincial and local government levels, is the EU's top priority in these negotiations. The proposed restrictions would severely curtail governments' ability to use their purchasing power to

enhance local benefits. The rules prohibit local development conditions, which are defined as offsets, even when contracts are competed for openly and do not discriminate against foreign suppliers.¹³

Mr. Sinclair also mentioned that he thought that municipalities, such as Toronto and some in the Province of Quebec, have applied local development criteria for some major contracts, including for public transit and green energy, that have been beneficial for their communities.

On that point, Don Downe informed the Committee that his understanding was that the right of municipalities to control public utilities under their jurisdiction was not under consideration in the Canada-EU CETA negotiations. He stated:

The other issue is that there are some concerns out there that we would lose our right to control our own utilities. That's not part of the agreement as we understand it. We've brought that issue forward to the minister and it was clarified that this is not going to be part of the negotiations. We are bringing our concerns forward, and at the end of the negotiations we will know what the outcome will be, but we have been able to voice our concerns very clearly to that level.¹⁴

While listing the seven principles of the Federation of Canadian Municipalities relatively to international trade¹⁵, Mr. Downe also noted that Canadian and European negotiators appear to have agreed to a threshold of \$8.5 million for construction-related procurements as part of the CETA negotiations. He felt that this threshold is reasonable, particularly considering that it is consistent with thresholds under the *WTO Agreement on Government Procurement* and the *Agreement Between the Government of Canada and the Government of the United States of America on Government Procurement*.

One major challenge facing CETA negotiators regarding labour mobility is provincial and territorial jurisdiction over the regulation of professional and trade occupations in Canada. In a number of occupations, there are significant impediments to inter-provincial and inter-territorial labour mobility, largely the result of differences between the provinces and territories in licensing requirements and in recognizing qualifications.

Finally, the Committee noted that, in terms of services trade commitments, Canada has taken a “negative list” approach in past trade agreements, including NAFTA, which means that all items are covered except for specific exemptions. To date, the EU has never used this approach, relying instead on a “positive list” method that involves agreeing

13 Evidence, Meeting No. 12, November 17, 2011.

14 Evidence, Meeting No. 5, October 18, 2011.

15 The seven principles can be found on page 11 of Mr. Downe's testimony on October 18, 2011, available at: <http://www.parl.gc.ca/content/hoc/Committee/411/CIIT/Evidence/EV5177802/CIITEV06-E.PDF>.

to commitments in a specified list of areas. The Committee has learned, however, that the EU has agreed to take a negative list approach in the negotiations toward a CETA between Canada and the EU.

The European perspective

Most of the European participants who spoke about trade in services and labour mobility expressed the view that a CETA should make it possible to reduce barriers in services trade between Canada and the EU and to facilitate the movement of business people and professionals.

According to interlocutors from **BUSINESSEUROPE**, which represents the interests of private companies in Europe, labour mobility is a particularly challenging issue with Canada because of the lack of harmonization of provincial and territorial rules. The example of European workers who had to return to Europe in order to complete the paperwork required to move from one Canadian province or territory to another was used to illustrate this issue.

Government representatives from some EU member states explained to the Committee how complicated it was for them to use the negative list approach for making commitments relating to the services sectors. In fact, they were required to examine each type of service in order to find out whether they would agree that liberalization commitments could be made on their behalf, an exercise that took a number of months to complete. However, the European Commission's chief CETA negotiator observed that, in hindsight, this analytical exercise carried out by the 27 member states will be profitable for them and will ultimately lead to a more ambitious services liberalization agreement.

On the issue of the inclusion of public services in a Canada-EU CETA, the representatives from two EU member states were concerned about the definition of public services in a CETA and the exclusions that would apply to public services. However, the European Commission's chief CETA negotiator explained that there was no question of a CETA forcing the different levels of government in Canada or in Europe to privatize their public services. That said, he considered that, in the event that privatization occurs, the rules should allow the suppliers of Canadian and European services to receive equitable treatment in terms of their prospects for winning contracts from these governments.

Finally, representatives from another EU member state expressed their hope that cultural services would be dealt with carefully during Canada-EU CETA negotiations and said that they understand Canada's position and the wish to include a cultural exclusion clause similar to the clause in the free trade agreements that Canada has signed with other trading partners. That said, they felt it would be worthwhile for the two parties to discuss the definition of a cultural service.

Quebec's Delegate General in Brussels and the French parliamentarians who Committee members met in Brussels and in Paris pointed out the importance of cultural diversity and of protecting it in the CETA negotiations between Canada and the EU. According to them, this protection should apply to cultural products and to cultural services.

Investment protection

The Canadian perspective

A number of Canadian witnesses raised the issue of investment protection in the Canada-EU CETA negotiations. DFAIT representatives informed the Committee that initial discussions with the European negotiators on this issue took place in the autumn of 2011, and that discussions are still only in their early stages. That said, DFAIT representatives nevertheless described a number of investment protection issues on which Canada and the EU were in agreement, despite differences of opinions on other issues.

Business trade associations and industry associations called attention to the importance of direct investment in the economic relationship between Canada and the EU, and they were in favour of a CETA agreement that would help protect and promote investments between the two regions and that would address current barriers to investment.

Although there has been some evolution in content over the years, nearly all of Canada's free trade agreements, and all of its foreign investment promotion and protection agreements, have wording and a structure similar to NAFTA's Chapter 11, and include provisions that make it possible for investors and states to settle their disputes directly. In this regard, the Committee noted that the current Canada-EU CETA negotiations mark the first time the EU has obtained a mandate from the 27 member states to negotiate a chapter on investment protection on their behalf that could include investor-state arbitration provisions.

Some of the witnesses were concerned about including provisions for an investor-state dispute-resolution mechanism in a Canada-EU CETA. Scott Sinclair and Stuart Trew believed that such provisions grant special rights to foreign investors that enable them to bypass domestic court systems and to challenge social, environmental and economic regulations that affect their profitability. These witnesses felt that Canada and the EU had mature, highly regarded court systems and that there was no justification for including investor-state arbitration provisions in a CETA.

According to Jason Langrish (Executive Director, Canada-Europe Roundtable for Business), including investor-state provisions in a Canada-EU CETA is important because even though Canada is enormously reliant on foreign trade and investment, it does not have resources that are comparable to those of other countries, such as the United States

or China. According to him, it is, therefore, unrealistic to expect Canadian businesses to petition their government to act on their behalf every time they have a problem that relates to a foreign investment.

Also according to Mr. Langrish, the NAFTA investor-state arbitration provision has been of benefit to Canada and the number of cases that have been brought forward under this provision is extremely small, considering the volume of trade and the flows of investment among the signatories to the agreement.

For other witnesses, the key to the Canada-EU CETA negotiations will be to find a compromise between promoting investment between Canada and the EU and preserving the government's authority to make regulations. Daniel Schwanen (Associate Vice-President, Trade and International Policy, C.D. Howe Institute) said:

Open international trade and investment, within accepted rules of fair competition, so long as governments do not relinquish the ability to regulate and set standards in the public interest or to help the disadvantaged, is beneficial for sustainable jobs, innovation, and economic growth.¹⁶

The European perspective

In its meetings in Brussels and Paris, the Committee noted that the investment relationship between Canada and the EU is considered as important in Europe as it is in Canada.

The Committee was made aware of the importance of addressing existing barriers to investment between the two countries. In this regard, the European Commission's chief CETA negotiator raised concerns about some of Canada's investment measures, primarily the *Investment Canada Act*, which affects the level of predictability that foreign investors need in certain cases.

The European Commission's chief CETA negotiator said the investment policies in the EU are predictable and transparent. According to him, some member states are also concerned that the EU appears to be generous in terms of its investment policies as compared to the market access and the opportunities that are open to European companies abroad.

Representatives from an EU member state told the Committee that they consider European investors to be well protected in Canada in view of the effectiveness and quality

16 Evidence, Meeting No. 14, November 24, 2011.

of Canada's judicial system. For this reason, they do not consider the CETA negotiations with Canada on investment protection to be a priority.

Government procurement

The Canadian perspective

The Committee was informed that opening up government procurement markets in Canada, particularly at the provincial, territorial and municipal levels, is one of the priorities for European negotiators. It appears that they will have to gain concessions from Canadian provinces, territories and municipalities for negotiations to succeed.

The Committee learned that the scope of trade agreements negotiated by the Canadian federal government in the past had not extended to provincial, territorial and municipal governments or to Crown corporations. That situation changed with the 2010 *Canada–United States Agreement on Government Procurement*, in which provinces, territories and certain Canadian municipalities agreed, for the first time, to temporary commitments allowing US corporations to bid on Canadian government contracts.

DFAIT representatives confirmed that, in the CETA negotiations, Canada has agreed to open certain markets. That said, DFAIT representatives do not expect that a Canada-EU CETA would significantly change the current situation as it relates to the Canadian procurement system. Steve Verheul stated:

With respect to government procurement, bear in mind that we will be opening up some markets to the European Union, but for the most part we're not anticipating any big changes. Our procurement system in Canada is largely open to begin with. Municipalities, provinces, and the federal government often have contracts with foreign suppliers, so we're not anticipating a huge change.¹⁷

It should be noted that the Canadian negotiators have the support of the provinces and territories for the inclusion of a chapter on government procurement in a Canada-EU CETA. In this regard, Steve Verheul said:

When we put an offer on the table with the EU on government procurement, it is fully endorsed by the provinces and the territories, which were a great help in constructing those offers. So the consultation process has been unlike any we've ever had before on these issues.¹⁸

17 *Evidence*, Meeting No. 5, October 6, 2011.

18 *Ibid.*

While the issue of government procurement is often described as a subject on which Canada negotiates defensively, a number of witnesses told the Committee that many Canadian companies in a number of different economic sectors also have offensive interests in the EU government procurement market, which represents more than \$2 trillion and to date has remained largely untapped by Canadian companies. Jean-Michel Laurin and Don Downe said that they hoped that greater access for Europeans to Canadian procurement markets would open the door for Canadians to make similar gains in the EU.

Speaking for Canadian municipalities, Don Downe also explained that the minimum thresholds above which government contracts would be affected by a Canada-EU CETA must be reasonable. Thresholds that are too low or too broad could force municipalities to tender projects when tendering is neither practical nor financially justified.

Some witnesses expressed their fears about the negative impact that liberalizing the rules for awarding government contracts could have on the capacity of the various levels of government in Canada to create employment, protect the environment and assist marginalized groups. For instance, Theresa McClenaghan (Executive Director and Counsel, Canadian Environmental Law Association) said that she hoped that a Canada-EU CETA would not open the door to privatizing certain public services or to private-sector involvement in services such as drinking water and wastewater. Ms. McClenaghan said that her association had consistently supported public ownership and governance of drinking water and wastewater systems because of accountability, safety and affordability issues. That said, as noted earlier, the Minister of International Trade told the Committee that the government's powers and ability to regulate were not up for sale as part of the Canada-EU CETA negotiations.

The European perspective

Through the meetings in Europe, the Committee was able to confirm that access to Canadian government procurement, specifically the involvement and consent of Canada's provincial, territorial and municipal governments, is one of the EU's primary interests in the CETA negotiations.

Representatives from an EU member state made a point of assuring the Committee that the goal of the Canada-EU CETA negotiations was to ensure fair competition and to avoid discrimination in the adjudication of public procurement, not to promote the privatization of any particular service. In their view, the issue of privatization is outside the scope of the current negotiations between Canada and the EU.

The European Commission's chief CETA negotiator expressed the hope that the current negotiations will allow European companies to have guaranteed access to government procurement by Canadian provinces, territories and municipalities, especially since the EU member states are prepared to do the same. In fact, although the EU has included contracts issued by its sub-central government entities and Crown corporations in

its commitments under the WTO *Government Procurement Agreement*, Canada is excluded from the list of beneficiary countries because of the lack of reciprocity.

The European Commission's chief CETA negotiator noted that, despite the challenges that remained, he was confident that the two parties would find an accommodation on the issue of government procurement.

Representatives from the European Economic and Social Committee echoed the optimistic views expressed by the European Commission's chief CETA negotiator when they stated that it was normal that the issue of government procurement would raise questions about its impact on the delivery of public services. Their experience showed that, ultimately, the issue could not really be viewed as a problem because the matter of privatization was not covered by the negotiations for an agreement such as a CETA.

Intellectual property rights

The Canadian perspective

The Committee noted that the issue of intellectual property rights is an element of the Canada-EU CETA negotiations in respect of which the EU is likely to have numerous demands. In addition to strengthening copyright protection, and recognizing a system for European geographical indications and the list of related products, it is expected that the EU will ask Canada to amend its intellectual property legislation with regard to patents awarded to pharmaceutical products.

Most of the evidence heard concerning intellectual property rights dealt with the issue of pharmaceutical patents in Canada. The Committee noted there were contradictory opinions on the potential impact of changing Canada's current legislation so that it more closely reflects the European model.

Representatives from Canadian pharmaceutical research companies explained that they feel a Canada-EU CETA provides an opportunity for Canada to strengthen its intellectual property regime for the life sciences sector. More specifically, they asked that Canada make changes that would improve the right of appeal for innovators, extend data protection by two years and enable patent term restoration. According to Russell Williams (President, Canada's Research-Based Pharmaceutical Companies), intellectual property rights help protect and encourage innovation across all industrial sectors and, each time Canada has strengthened its intellectual property regime in the past, it has been good for Canadian patients, Canada's healthcare system and the Canadian economy.

Mr. Williams also noted that intellectual property rights are protected more effectively in European countries than in Canada, and most of those countries spend less on healthcare as a percentage of GDP than does Canada.

Debbie Benczkowski (Interim Chief Executive Officer, Alzheimer Society of Canada) expressed her support for the position taken by Canadian pharmaceutical research companies and stated that her organization believed that reforming intellectual property standards for medicines in Canada would maintain knowledge-based investments with the potential to add \$12 billion to the Canadian economy.

Representatives from the Canadian Generic Pharmaceutical Association did not share this view. According to an academic study commissioned by the association, the changes to the intellectual property regime governing pharmaceutical patents proposed by the EU in the CETA negotiations would delay generic competition for three and a half years on average, which would increase the cost of the Canadian healthcare system by \$2.8 billion per year.

According to Barry Fishman (Chair, Canadian Generic Pharmaceutical Association), studies show that extending patent life does not increase R&D investment by brand-name pharmaceutical companies in Canada. In his view, the primary motivation behind the proposals from the pharmaceutical companies in relation to the Canadian intellectual property regime in the context of the Canada-EU CETA negotiations is to increase their profits, especially since many of them are based in Europe.

DFAIT representatives told the Committee that they are aware of the positions held by the various Canadian stakeholders on the issue of pharmaceutical patents. To date, however, Canada has made no concessions in this regard and it is possible that Canada will not make concessions on the issue before the end of the CETA negotiations.

Finally, representatives from the Canadian Manufacturers & Exporters as well as from the Dairy Farmers of Canada told the Committee that Canada must not give in to the EU's demands on the issue of geographical indications. According to them, Canadian farmers must not be impeded in their ability to name and promote certain common agri-food products, such as feta and Parmesan cheese.

The European perspective

The issue of the Canadian patent regime for pharmaceutical products monopolized the intellectual property rights discussions during the Committee's meetings in Europe.

Representatives from BUSINESSEUROPE and some EU member states pointed out that better protection for pharmaceutical patents in Canada was a critical EU priority in the Canada-EU CETA negotiations. They did not feel that greater patent protection would result in a noticeable increase in costs for the Canadian healthcare system. More importantly, they felt that Canada would benefit from increased protection because it is likely to mean an increase in research and innovation in Canada.

The EU expressed its concerns with regard to current copyright protection in Canada. The Committee noted, however, that a Canadian government bill on copyright modernization, introduced in the House of Commons in September 2011, is likely to respond to most of the EU's concerns.

The Committee also noted that the EU is attempting to obtain formal recognition of the EU's system of geographical indications for certain food products, primarily cheeses.¹⁹

European and French Parliamentarians expressed their belief that Canadian and European negotiators would manage to find an accommodation on the issues involving intellectual property rights.

CONCLUSION

Committee members heard varied positions during their study of a Canada-EU CETA. While some witnesses raised concerns, the majority supported a CETA and felt that its effects would be positive for Canada. Similar comments were made in Europe, where almost all participants supported the ongoing negotiations and believed that a CETA would lead to greater economic integration between the two regions.

The Committee noted that the CETA negotiations between Canada and the EU are progressing rapidly when compared with what is normally the case at the international level for negotiations on trade liberalization agreements between two or more states. In light of its meetings with European participants, the Committee also concluded that the sovereign debt crisis that Europe is experiencing at the moment is unlikely to have a damaging effect on the negotiations under way.

The Committee welcomed the increased participation of Canadian provinces and territories in the negotiation process for an agreement that could be more comprehensive than any similar agreement negotiated by Canada in the past. This coordination of efforts among Canada's different levels of government should facilitate the implementation of a CETA, especially since it could include commitments in areas of provincial or territorial jurisdiction.

Consequently, the Committee recommends that:

19 *The Agreement Between the European Community and Canada on Trade in Wines and Spirit Drinks*, signed on September 16, 2003, provides protection for geographical indications for Canadian and European wines and spirits.

Recommendation 1

Recognizing that the European Union is a historical and natural trading partner, the Government of Canada strengthen its ties with the European Union and, in 2012, conclude a Comprehensive and Economic Trade Agreement with the European Union that is of net benefit to Canada.

Recommendation 2

In order to assist Canadian businesses and promote the opportunities within the European Union, the Government of Canada draw on stakeholder testimonials and consultations to encourage Canadian businesses to trade with the European Union.

Recommendation 3

In recognition that, under the Treaty of Lisbon, the European Parliament has increased influence and power over foreign policy and the adoption of trade agreements, the Government of Canada and the Committee work on strengthening their relations with the various political groups represented in the European Parliament in order to ensure passage of the Comprehensive and Economic Free Trade Agreement with the European Union.

Recommendation 4

The Government of Canada develop a proactive plan to pursue more value-added development of Canadian exports in order to maintain market access for exports while capturing greater economic benefits at home and reducing environmental impacts.

APPENDIX A LIST OF WITNESSES

| Organizations and Individuals | Date | Meeting |
|--|------------|---------|
| <p>Department of Foreign Affairs and International Trade</p> <p>Ed Fast, Minister of International Trade</p> <p>Ana Renart, Deputy Chief Trade Negotiator, Canada-European Union</p> <p>Steve Verheul, Chief Trade Negotiator, Canada-European Union</p> | 2011/10/06 | 5 |
| <p>Canada Europe Roundtable for Business</p> <p>Jason Langrish, Executive Director</p> <p>Roy MacLaren, Canadian Chairman</p> | 2011/10/18 | 6 |
| <p>Canadian Council of Chief Executives</p> <p>Sam Boutziouvis, Vice President, Policy, International and Fiscal Issues</p> | | |
| <p>Canadian Manufacturers and Exporters</p> <p>Jean-Michel Laurin, Vice-President, Global Business Policy</p> | | |
| <p>Federation of Canadian Municipalities</p> <p>Don Downe, Chair, Standing Committee on Finance and Intergovernmental Relations, Mayor of the Municipality of the District of Lunenburg</p> | | |
| <p>Association of Seafood Producers</p> <p>Derek Butler, Executive Director</p> | 2011/10/27 | 9 |
| <p>Canada's Research-Based Pharmaceutical Companies (Rx & D)</p> <p>Declan Hamill, Chief of Staff and Vice-President, Legal Affairs</p> <p>Brigitte Nolet, Director, Government Relations and Health Policy, Specialty Division, Hoffmann-La Roche Limited</p> <p>Russell Williams, President</p> | | |
| <p>Canadian Agri-Food Trade Alliance</p> <p>Kathleen Sullivan, Executive Director</p> | | |
| <p>Canadian Cattlemen's Association</p> <p>John Masswohl, Director, Government and International Relations</p> | | |

| Organizations and Individuals | Date | Meeting |
|--|------------|---------|
| <p>Canadian Generic Pharmaceutical Association Jody Cox, Director, Federal Government Relations Barry Fishman, Chair, President and Chief Executive Officer, Teva Canada Jim Keon, President</p> | | |
| <p>Dairy Farmers of Canada Wally Smith, President</p> | | |
| <p>Alzheimer Society of Canada Debbie Benczkowski, Interim Chief Executive Officer</p> | 2011/11/15 | 11 |
| <p>Canada Pork International Jacques Pomerleau, President</p> | | |
| <p>Consumer Health Products Canada David Skinner, President</p> | | |
| <p>Forest Products Association of Canada Andrew Casey, Vice-President, Public Affairs and International Trade</p> | | |
| <p>Canadian Centre for Policy Alternatives Scott Sinclair, Senior Research Fellow</p> | 2011/11/17 | 12 |
| <p>Canadian Chamber of Commerce Milos Barutciski, Partner and Co-Chair, International Trade and Investment Practice, Bennett Jones Mathias Hartpence, Director, International Policy</p> | | |
| <p>Grain Growers of Canada Jim Gowland, Representative, Past-President, Canadian Soybean Council Richard Phillips, Executive Director</p> | | |
| <p>SNC-Lavalin Group Inc. Robert G. Blackburn, Senior Vice-President</p> | | |
| <p>As individual Ian Lee, Assistant Professor, Strategic Management and International Business, Sprott School of Business, Carleton University</p> | 2011/11/22 | 13 |
| <p>ARKTOS Developments Ltd Bruce Seligman, President, Domestic Sales (Canada)</p> | | |

| Organizations and Individuals | Date | Meeting |
|--|------------|---------|
| Council of Canadians | | |
| Stuart Trew, Trade Campaigner | | |
| European Union Chamber of Commerce in Toronto (EUCOCIT) | | |
| Anders Fisker, Chair, Danish Canadian Chamber of Commerce, EUCOCIT Board Director representing Denmark | | |
| Atlantic Institute for Market Studies | 2011/11/24 | 14 |
| Don McIver, Director of Research | | |
| C.D. Howe Institute | | |
| Daniel Schwanen, Associate Vice-President, Trade and International Policy | | |
| Canadian Environmental Law Association | | |
| Theresa McClenaghan, Executive Director and Counsel | | |
| Sustainable Development Technology Canada | | |
| Vicky J. Sharpe, President and Chief Executive Officer | | |
| Department of Foreign Affairs and International Trade | 2011/11/29 | 15 |
| Ana Renart, Deputy Chief Trade Negotiator, Canada-European Union | | |
| Leigh Sarty, Director, Institutions, Policy and Operations Division, Europe and Eurasia Bureau | | |
| Steve Verheul, Chief Trade Negotiator, Canada-European Union | | |

APPENDIX B

LIST OF INDIVIDUALS WHO MET WITH THE COMMITTEE (DECEMBER 5 – 8, 2011)

| Organizations and Individuals | Date | Location |
|--|-------------------|------------------------------|
| <p>BUSINESSEUROPE</p> <p>Pascal Kerneis, Senior Adviser, International Relations Department</p> <p>Adrian van den Hoven, Director, International Relations Department</p> <p>CBI: The Voice of Business</p> <p>Naomi Harris, Senior Policy Advisor</p> <p>Confederation of Employers and Industries of Spain</p> <p>Victoria Perezagua Antúnez International Relations Department</p> <p>Department of Foreign Affairs and International Trade (Canada)</p> <p>Ana Renart, Deputy Chief Trade Negotiator, Canada-European Union</p> <p>Steve Verheul, Chief Trade Negotiator, Canada-European Union</p> <p>European Commission – Trade</p> <p>Kristofer Du Rietz Trade Relations with Canada, Directorate-General for Trade</p> <p>Philipp Dupuis, Deputy Head of Unit, Trade Relations with North America, Directorate-General for Trade</p> <p>Mauro Petriccione, directeur, Trade Relations with Asia and Latin America</p> <p>European Federation of Pharmaceutical Industries and Associations (EFPIA)</p> <p>Louis-Nicolas Fortin, Director, IP and Trade</p> <p>European Parliament</p> <p>Philippe Bradbourn, Member, Chair, Delegation for Relations with Canada</p> <p>Ioan Enciu, Member, Member, Committee on Industry, Research and Energy</p> <p>Elisabeth Jeggle, Member, Vice-Chair, Delegation for Relations with Canada</p> <p>Mairead McGuinness, Member</p> | <p>2011/12/05</p> | <p>Brussels, Belgium</p> |

| Organizations and Individuals | Date | Location |
|--|------------|----------------------|
| Vital Moreira, Member, Chair, International Trade Committee | | |
| Peter Štastný, Member, Member, International Trade Committee | | |
| Mission of Canada to the European Union | | |
| Colin Barker, First Secretary, Trade and Economic Policy | | |
| Catherine M. Dickson, Counsellor, Head of Trade and Economic Policy | | |
| Karl Dupuis Trade Policy and Agricultural Officer | | |
| Christian Hallé Trade Policy and Agricultural Officer | | |
| H. David Plunket, Ambassador of Canada to the European Union | | |
| Permanent Representation of the Federal Republic of Germany to the European Union | | |
| Anne-Kathrin Röthemeyer, Counsellor, Trade Policy, Transatlantic Relations, Latin America | | |
| Embassy of Canada to Belgium | 2011/12/06 | Brussels, Belgium |
| Louis de Lorimier, Ambassador | | |
| Sirine Hijal, First Secretary | | |
| Béatrice Maillé, Counsellor, Political, Economic and Public Affairs | | |
| Andrée Vary, Counsellor and Senior Trade Commissioner | | |
| European Economic and Social Committee | | |
| Jean-François Bence, Director, External Relations – Agriculture, Rural Development, Environment – Transport, Energy, Sustainable Development | | |
| Sandy Boyle, President, External Relations Section | | |
| Jonathan Peel, President, Permanent Study Group on International Trade | | |
| Beatriz Porres, Head of Unit, External Relations | | |
| Fluxys SA | | |
| Hélène Deslauriers, Member, Board of Directors | | |
| Government of Quebec | | |
| Christos Sirros, Delegate General | | |
| Kingdom of Belgium | | |
| Cathy Buggenhout, Director, Federal Public Service, Foreign Affairs, Foreign Trade and | | |

| Organizations and Individuals | Date | Location |
|--|-------------|------------------|
| <p>Development Cooperation</p> <p>Philippe Roland, Director, Western Europe and North America Directorate Federal Public Service, Foreign Affairs, Foreign Trade and Development Cooperation</p> <p>Permanent Representation of the Republic of Poland to the European Union</p> <p>Joanna Bek, First Secretary, Trade Wojciech Sudot, First Secretary</p> <p>PROOST</p> <p>Frederic L. Agneessens, Chairman</p> <p>RHEA System S.A.</p> <p>André Sincennes, Managing Director, Executive Vice-President, Engineers and Systems Analysts Group</p> <p>Embassy of Canada in France</p> <p>Marc Bethiaume, Parliamentary and Political Adviser, Analyst and Visit Coordinator</p> <p>Caroline Charette, Counsellor (Commercial)</p> <p>Yannick Dheilily, Trade Commissioner, (Agriculture, Agrifood and Fishery Products)</p> <p>Jean-Dominique Ieraci, Minister-Counsellor, Economic and Commercial</p> <p>Marc Lortie, Ambassador</p> <p>France-Canada Chamber of Commerce</p> <p>Pierre Meynard, President</p> <p>Institut Montaigne</p> <p>Jean-Paul Tran Thiet, Director, Economic Affairs, Avocat du Barreau de Paris, White & Case</p> <p>Mouvement des Entreprises de France (MEDEF)</p> <p>André-Luc Molinier, Director, European Affairs</p> <p>National Assembly (France)</p> <p>Georges Colombier, Member, Président, France-Canada Interparliamentary Association</p> <p>Jacques Desallangre, Member</p> <p>Jacques Gaubert, Member, Vice-Chair, Committee on Economic Affairs, Environment and Territories</p> | 2011/12/07 | Paris, France |

| Organizations and Individuals | Date | Location |
|---|------------|------------------|
| Richard Maillié, Member, France-Canada Interparliamentary Association | | |
| Jacques Remiller, Member, Secretary, Foreign Affairs Committee | | |
| Gérard Voisin, Member, Vice-Chair, European Affairs Committee | | |
| Senate (France) | | |
| Marcel-Pierre Cléach, Senator, President, Groupe d'amitié sénatorial France-Canada | | |
| Matthieu Messonier, Manager, Groupe d'amitié sénatorial France-Canada | | |
| Association Générale des Producteurs de Blé et autres céréales (AGPB) | 2011/12/08 | Paris, France |
| Nicolas Ferenczi, Chief Economist | | |
| Jean-Pierre Langlois Berthelot, Deputy Secretary | | |
| Hervé Le Stum Director General, Intercéréales | | |
| Fédération Nationale des Syndicats d'Exploitants Agricoles (FNSEA) | | |
| Didier Delzescaux Manager, French Interprofessional Porc Council (INAPORC) | | |
| Anna Le Moigne Project Manager, French Interprofessional Porc Council (INAPORC) | | |
| Claude Soudé Agricultural Policy, Markets and Industries | | |
| Caroline Tailleur, Manager, Hog Production, Economics and Sustainable Development | | |
| French Republic – Ministry responsible for overseas departments | | |
| Gilles Huberson, Diplomatic Adviser | | |
| Arnaud Martrenchar, Chief, Department of Agricultural, Rural and Marine Policy | | |
| Isabelle Richard, Counsellor | | |
| French Republic – Prime Minister – European Affairs General Secretariat | | |
| Thomas Pierre Boisson, Chief, European Union External Relations | | |

APPENDIX C LIST OF BRIEFS

Organizations and Individuals

Atlantic Institute for Market Studies

Canada's Research-Based Pharmaceutical Companies (Rx & D)

Canadian Agri-Food Trade Alliance

Canadian Generic Pharmaceutical Association

Canadian Labour Congress

Consumer Health Products Canada

Dairy Farmers of Canada

Sustainable Development Technology Canada

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 5, 6, 9, 11-15, 17-22 and 24](#)) is tabled.

Respectfully submitted,

Hon. Rob Merrifield, P.C., M.P.

Chair

NDP Dissenting Report for CIIT - CETA Study

The NDP thanks the Committee and witnesses for the time put into this important subject. International trade is crucial to sustaining Canada's economic growth and prosperity, and increasing trade with the European Community is an important goal. While the NDP is supportive of efforts to lift tariffs, and diversify our export markets, boosting Canada's trade performance will require more than just free trade agreements. Our success will require a strategic plan for public investment and support of key value-added industrial sectors to help back Canadian global winners, which we are pleased to see as a recommendation from the committee.

At the same time, it is clear that trade and investment agreements, such as the Canada-EU Comprehensive Economic and Trade Agreement (CETA), are about far more than just international trade. Such treaties affect public regulation of investment, services, intellectual property, public purchasing and other matters only peripherally related to trade. The details and terms of the agreement matter and must be scrutinized to weigh costs and benefits. We do not support concluding the deal as currently framed in the time period recommended by the majority on the Committee.

Transparency is essential. The NDP objects to the lack of transparency in the current negotiation process. Closed-door meetings have created a climate of secrecy in the CETA process. Too little public information exists for Canadians and their elected representatives, at all levels of government, to reach informed conclusions on the merits and risks of CETA. It is only through a meaningful consultation process, which engages all stakeholders, that we will craft trade agreements that benefit all Canadians. Even this Parliamentary Committee study did not allow full participation for interested stakeholders, including many submitted by the NDP.

The treatment of **public services** in free trade agreements is controversial. Too often, treaty protections for sensitive sectors such as health care, education, social services and municipally provided services including water treatment and delivery or public transit leave the door open to trade and investment challenges. Public contracts for these and other services are a principal point of interest for the EU in the CETA negotiations. Canada must seek a clear exclusion for public services broadly understood as well as protection for future policy flexibility at all levels of government.

For health care, there is particular concern from experts and citizens groups that the government is stepping back even from the protections it built into the NAFTA. A strong exclusion for healthcare is needed, as well as a commitment to avoid inflating the costs of medicine, which are the fastest-rising component of Canadian health care costs.

CETA would be the first Canadian bilateral FTA since NAFTA to have an **intellectual property rights** (IPR) chapter, going well beyond Canada's existing obligations. EU demands include adding the extra time it takes for a drug to receive regulatory approval (up to 5 years) to the regular 20-year term of patent protection, longer terms for data

protection (from 8 to 10 years), and new rights of appeal that could delay the approval of generic drugs. Such changes would reduce the availability of medicines, and drive up drug costs, which could deal a critical blow to the sustainability of our health care system. A recent study estimates these extra costs at \$2.8 billion annually.

Since IPR provisions are so rare in Canadian bilateral trade agreements and European negotiators have placed such great weight on these provisions, we should scrutinize the implications carefully. Further study is needed to consider the implications of harmonizing our IPR system with the EU in all relevant sectors and to determine the costs or benefits that will be witnessed by Canadian consumers and producers.

The NDP also has significant concerns about the CETA's impact on **government procurement at the sub-federal level**. From available information, the proposed rules would prevent governments from considering, in covered sectors, any 'condition' that encourages local development in procurement contracts or bids, even if the process is non discriminatory to foreign bidders. Restricting government procurement in this way deprives provincial and municipal governments of crucial economic levers, particularly during economic downturns, to use government purchasing to stimulate the economy and encourage local spinoffs.

The NDP supports the need for open and fair government tendering practices, but this does not require sacrificing the ability for governments to use procurement to serve local economic objectives. Municipalities including Toronto, the Union of British Columbia Municipalities (representing 150 municipalities) and over twenty others across the country, have been raising red flags about the back room CETA trade talks. These municipalities have asked their provincial and federal governments to ensure their existing rights are protected under any new trade agreement and that they be excluded from the CETA. Their concerns must be heard and addressed.

As noted in the Committee's report, participation of the provinces in the negotiations makes the process more complex. The objective to bind sub federal levels of government in the CETA on a range of issues from procurement to services raises important questions of constitutional authority, particularly in relation to enforcement of the agreement and financial liability. Further study is warranted.

The NDP welcomes any opportunities for real export growth for Canadian agricultural sectors, while noting continued European resistance at various levels. We also remain concerned about continued pressures to open Canada's **supply managed sectors**, which must be protected.

The CETA also needs to account for the highly integrated nature of North American production and the NDP appreciates the acknowledgement of this issue in the committee's report. Provisions regarding **rules of origin** must be sufficiently broad to ensure the vast majority of Canadian exports are not subject to tariffs. The automotive industry is of particular concern given the high degree of cross-border production and the potential sensitivity of production decisions to various rules of origin thresholds.

Finally, the NDP views **investor-state provisions** as an inequitable element in trade agreements that privilege corporations in a way that conflicts with the public interest. Investor-state arbitration allows foreign investors to bypass domestic court systems. Arbitration tribunals, which lack accountability, can order governments to compensate investors allegedly harmed by public policies or regulations. Both Canada and Europe have highly regarded court systems that protect the rights of all investors regardless of nationality. The NDP opposes including investor-state arbitration in the CETA and recommends that Canada follow the lead of Australia in rejecting investor-state arbitration in future trade and investment agreements.

In conclusion, the NDP urges a re-think of Canada`s approach to expanding trade with Europe, and consideration of means for enhancing mutual economic prosperity in a way that contributes to a greener economy, and bolsters high quality jobs and labour rights, while respecting democratic decision making regarding public services, public regulation, local government procurement and the public interest.

Recommendations

- 1. The Government should publicly disclose the negotiating text and Canada`s offers (federal, provincial, territorial) before the text of the treaty is finalized.**
- 2. The Government should ensure full consultation with municipal governments in Canada regarding CETA offers and negotiations, and modify its time frame for the negotiations to enable this participation.**
- 3. The Government should ensure that the final text does not include investor-state arbitration provisions.**
- 4. The Government should ensure that the final text does not include any changes to patent protection that would decrease the availability of generic drugs or increase drug costs.**
- 5. The Government should ensure that the final text exempts provincial, territorial and municipal government procurement.**
- 6. The Government should ensure that municipal drinking water and waste water services are explicitly included in its Annex II reservations.**
- 7. The Government should seek a clear and broad exclusion for public services including protection for future policy flexibility at all levels of government to expand public services or return privatized sectors to the public sector without threat of litigation.**

- 8. The Government should negotiate a new exemption for health care stipulating that nothing in the CETA shall be construed to apply to measures of a signing party regarding health care or insurance.**
- 9. The Government should ensure a broad cultural exemption in CETA that would exclude books, magazines, newspapers, publishing, broadcasting, film, video, performing arts and other aspects of cultural industries.**
- 10. The Government should exclude over-access tariffs on supply-managed products from tariff reduction, and re-affirm that producers and their elected representatives will maintain the unfettered ability to collectively manage domestic supply for egg, poultry, and dairy products.**
- 11. The Government should effectively safeguard the capacity to institute or re-institute a single desk for grain marketing, in any geographic region, should a majority of farmers' elected representatives decide to do so.**
- 12. The Government should develop an industrial strategy for Canada that partners with industry to identify competitive high-productivity sectors that can be developed into high-value export champions, as well as current export sectors in Canada that may need support to remain competitive with the European Union (including forestry, auto, etc.). This could include leveraging procurement, providing R&D support through direct grants, and improving both physical and knowledge infrastructure.**
- 13. The Government must retain the ability to implement federal financial incentives and ensure community benefits in the development of clean power, including solar, wind, and water. Canada must develop innovative green energy technologies that will help us meet domestic needs and access a growing global market.**
- 14. The Government should commission an independent study of the CETA whose specific terms of reference would be to determine the true cost of harmonizing Canada's intellectual property system with that of the European Union.**
- 15. The Government of Canada should insist that the CETA agreement establish a framework for ensuring market access, and continued production, for Canadian producers of comparable agricultural and food products that use designations protected under the EU's Geographic Indications regime .**

16. That the Government of Canada undertake a study to review where the CETA addresses areas of provincial jurisdiction as it related to the distribution of powers:

- in particular with respect to section 92 of *The Constitution Act, 1867*; and
- in all areas where there is shared, overlapping, or concurrent jurisdiction, and report on key implementation and enforcement issues that could arise.

17. That Government should ensure that CETA's provisions related to rules of origin are broad enough to ensure meaningful market access gains for Canadian exports, particularly auto, fish and agricultural products, recognizing the reality of highly integrated North American supply chains. With Specific reference to the Canadian automotive sector, the CETA must specify low rules of origin thresholds for Canadian manufactured automobiles.

LIBERAL PARTY

DISSENTING OPINION REPORT CETA NEGOTIATIONS

Introduction

The negotiations of the Canada – European Trade Agreement (CETA) are in their final phases and the precise issues which are on the table and specifically what issues have been settled upon in negotiations remains unclear.

The report of the committee made direct reference to the scale of the CETA agreement stating that the committee was “told of all trade negotiations entered into by Canada, including the NAFTA, the Canada-EU CETA negotiations are more likely to have a greater impact on Canada.”

That being said it is the concern of the Liberal Party that the committee has been deficient in conducting its hearings into the CETA. This conclusion has been reached on the basis that the committee examining the Canada – U.S. FTA in 1987 met with 147 witnesses and did so traveling the country. A similar course of action was taken by the committee in examining the NAFTA proposal in 1992-93 hearing from 124 witnesses and again traveling the country. The committee on CETA heard from 28 witnesses and never left Ottawa.

Recommendation 1:

Given the scale of the agreement being negotiated with the European Union, the committee should:

- A) Re-title the report as an Interim Report;**
- B) Commit to holding further hearings in the spring of 2012 on the negotiations with a commitment to travel across Canada to hear from Canadians and to invite provincial governments to make submissions and presentations to the committee.**

Deficiency of the background analysis of the CETA:

The basis for the government’s case on CETA is a projection of possible benefits. In his testimony before the committee Don Stephenson, ADM Trade Policy and negotiations for DFAIT told the committee that with respect to the analysis prepared prior to the commencement of negotiations on a Canada – India trade agreement that, “I want to make the point these are theoretical econometric studies. They are projections... I’d like to say that these are absolutely accurate assessments and predictions, but they can’t be.” (September 29, 2011, p. 8). During the course of a later hearing of the committee, Mr. Stephenson repeated this observation, stating, “The joint study is just an economic modelling exercise.” (International Trade committee, December 1, 2011, p. 10)

The Minister of International Trade confirmed that sectoral analyses have been conducted by the federal government during the course of negotiations but refused to provide them to the committee.

Recommendation 2:

That the government must clearly indicate not only the “benefits” from the trade agreement being sought but the “costs” which could result from any agreement being sought and identify them by sector. The assessments referred to by the Minister of International Trade should be shared with the International Trade committee in order for the committee to have a far better assessment of the impacts of the negotiations.

Legal implications of an agreement with respect to provincial/municipal governments

The committee report states that “the federal government is fully responsible for the implementation and application of international treaties.”

However, what has become evident is that neither the provinces, nor municipalities can apparently be held responsible or challenged directly by the EU for renegeing on elements of the agreement.

Recommendation 3:

Prior to the conclusion of the negotiations, the federal government should table with the committee a legal opinion clarifying the issue of responsibility under any agreement reached with the EU, outlining specifically the terms as to which level of government will bear responsibility for any dispute resolution finding against any province or municipality.

The issue of the consequences of the CETA on municipalities and the issue of procurement is important to note.

The committee has an obligation to call upon the government to clarify situation with respect to procurement which even the Federation of Canadian Municipalities told the committee is far from clear in terms of the impact the procurement provisions may have on municipalities and provinces in terms of any ability to tender contracts locally.

Intellectual property concerns – pharmaceutical costs:

In testimony before the committee the representatives of the generic pharmaceutical industry stated categorically that the impact on Canadians from the CETA as currently known will result in considerable cost increases in the range of an additional \$2.8 billion annually in drug costs.

While representatives of the major pharmaceutical companies challenged this position, it was of concern that the federal government has provided no third party analysis with respect to the entire issue.

Recommendation 4:

Prior to the submission of any agreement the government of Canada table an analysis with respect to the impact on pharmaceutical drug costs due to any implications arising from intellectual property changes.

Importance of the U.S. market – the need to keep new trade agreements in perspective:

During the course of the committee hearings, the extent of our reliance upon the US market was emphasized. “The trade department’s own analysis shows that where the United States market accounted for 74.9% of Canadian merchandise exports in 2010, by 2040 the U.S. share of Canadian exports is expected to be 75.5%.” (October 6, 2011, p.5). Thus, according to the government’s own estimates only 25% of our merchandise trade will be dedicated to the rest of the world.

Given this fact, it is critical that the Conservative government keep this reality at the forefront of its trade policy agenda, something which unfortunately, it is failing to do.

Recommendation 5:

That the committee conduct a series of hearings and table a report to Parliament on the status of current Canada – US trade issues with a focus on the future relationship with that market in the context of agreements such as the Canada – EU trade agreement.

Status of supply management in negotiations

The fate of our supply management system remains very much in question as a consequence of the CETA negotiations.

In testimony by Mr. Steve Verhuel, Canada’s chief negotiator at the talks on October 6th he confirmed in response to a direct question related to supply management that all issues were on the table and that as of that date, in so far as dairy specifically was concerned, there had not been any “in-depth” discussions to that point. (International Trade committee, October 6, 2011, p. 12)

What neither the Minister of International Trade, nor our chief negotiator would confirm was whether the issues of tariff reductions or increased access were being negotiated:

Recommendation 6:

That the committee call upon the government to specifically state the position taken at the negotiations with respect to supply management – not only whether the entire system is on the negotiating table but is the government prepared to concede on issues related to increased access by the EU, and whether specific tariff issues have been discussed with a view to reducing those tariffs on any or all supply managed commodities.

Regulatory implications

When Minister Fast appeared before the committee he stated:

“We’ve committed to preserving government powers and abilities to regulate. Canadian products, services and commercial expertise are not for sale. Our government’s powers and ability to regulate are not. October 6, 2011, p. 2)

Although the document was only referenced in testimony, the March 2011 Sustainability Impact Assessment prepared for the European Commission stated that the agreement, “will clearly reduce regulatory flexibility in Canada, some of which will also constitute reductions in economic and social, and potentially environmental policy space of the type relevant to this sustainability impact assessment.”

Recommendation 7:

(A) That the committee call for a full analysis be provided on the extent and impact of the procurement elements contained in the CETA prior to any submission by the government of the agreement for ratification by Parliament.

(B) That the Minister report to the committee on the foregoing.

The matter of investor protection and the implications on government policy must be carefully considered

In response to questions raised regarding the issue of investment protection, Canada’s chief negotiator stated, “We actually haven’t made a lot progress in that particular area because on the EU side they only recently gained a mandate from member states to negotiate in this area of investment protection.... The EU does come from a different perspective than we do—in some ways—on investment protection...” (October 6, 2011, p. 7)

What should be of concern is the evidence provided to the committee by Scott Sinclair:

“Investor rights agreements, such as the NAFTA chapter 11, go well beyond fair treatment. They grant special rights to foreign investors that

enable them to bypass domestic court systems. Early in the CETA negotiations, Canada put the NAFTA chapter 11 template on the table. The EU has now responded, quite recently in fact, and under pressure from some of the member states has been demanding an agreement with even stronger investment protections than the NAFTA in certain respects. It is also insisting that provinces and municipalities fully comply. Under the NAFTA's most-favoured-nation rules, any concessions made to European investors in the CETA are automatically extended to U.S. and Mexican investors." (November 17, 2011, p. 10)

Recommendation 8:

That the committee call upon the government to provide clarification to the committee regarding the status of negotiations or any final agreement concerning investor protection issues prior to submission of any final agreement to Parliament for ratification.

Conclusion

The Minister of International Trade told the committee that the CETA negotiations were the "most significant trade talks since NAFTA." (October 6, 2011, p. 1)

The brevity with which this committee has dealt with this agreement should be of concern to anyone interested in let alone concerned about the CETA.

The strategic agenda which propels this government's trade agenda remains unclear which has resulted in the apparent willingness to negotiate and reach Free Trade Agreements for the sake of achieving an agreement. This is a matter of serious concern.

