

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



Workshop

**EU - Canada
Comprehensive
Economic
and
Trade Agreement
(CETA)**

INTA



WORKSHOP

EU-Canada Comprehensive Economic and Trade Agreement (CETA)

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

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WORKSHOP

POLICY DEPARTMENT, DG EXPO - FOR THE
COMMITTEE ON INTERNATIONAL TRADE (INTA)



Wednesday 09.12.2015 – **14:30-17:00**
JÓZSEF ANTALL BUILDING, (BRUSSELS) – ROOM **2Q2**

CONTACT AND REGISTRATION: poldep-expo@europarl.europa.eu

EU-Canada Comprehensive Economic and Trade Agreement (CETA)



Chairman: **Bernd LANGE**

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PROGRAMME

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



For the Committee on International Trade (INTA)

WORKSHOP

EU-Canada Comprehensive Economic and Trade Agreement (CETA)

Wednesday, 09 December 2015
Brussels, József Antall Building, **Room (2Q2)**
14.30-17.00h

PROGRAMME

- 14.30-14.40 Welcome and introductory remarks by**
- **Bernd Lange**, Chair of the Committee on International Trade (INTA)
- 14.40-14.55 CETA: an important and ambitious deal for the EU with one of the first developed economies in the world.**
- **Cecilia Malmström**, Commissioner for Trade, European Commission
- 14.55-15.10 Q&A session with the Commissioner**
- 15.10-15.30 Expectations and impact of the CETA for the EU and Canada**
Speakers:
- **Steve Verheul**, Chief negotiator, Department of Foreign Affairs and International Trade, Ottawa, Canada
 - **Mauro Petriccione**, Chief negotiator, Deputy Director General, European Commission, DG Trade
- 15.30-16.10 CETA's potential gains and risks for the EU**
Speakers:
- **Dr Stephen Woolcock**, Associate Professor, Department of International Relations, London School of Economics, London, UK
 - **Pierre Sauvé**, Deputy Managing Director and Director of Studies at the World Trade Institute (WTI), University of Berne, Switzerland
- 16.10-16.55 Q&A**
- 16.55-17.00 Concluding remarks by the Standing Rapporteur, MEP Artis Pabriks**

BIOGRAPHIES

DIRECTORATE-GENERAL FOR EXTERNAL
POLICIES
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Brussels, József Antall Building, **Room (2Q2)**
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BIOGRAPHIES

Dr Stephen WOOLCOCK

Stephen Woolcock is an Associate Professor in international relations at the London School of Economics, where he teaches international political economy, the political economy of international trade and economic diplomacy as well as heads the LSE's International Trade Policy Unit. He is currently Programme Director for the Masters in international Political Economy. Woolcock has worked on international trade policy, both at the multilateral and preferential level and written on EU trade and investment policy. He coordinates the consortium of research institutes that was awarded the framework contract to provide briefing papers and studies for the INTA Committee. His recent books include S. Woolcock and N. Bayne (eds), *The New Economic Diplomacy: Decision-Making and Negotiation in International Economic Relations* (Aldershot: Ashgate, 2011 3rd edition); S. Woolcock, *European Union Economic Diplomacy* (Ashgate, 2012).

Mr Pierre SAUVÉ

Pierre Sauvé, a dual Canadian and French citizen, is Director of External Programs and Academic Partnerships and a faculty member at the World Trade Institute, University of Bern, Switzerland. He holds visiting professor appointments at the University of Barcelona and the College of Europe. Mr Sauvé was educated in economics and international relations at the Université du Québec à Montreal and Carleton University in Canada, and at Cambridge and Oxford universities in the United Kingdom. He has held visiting lecturer appointments at Sciences-Po in Paris, the London School of Economics and Political Science and the Harvard Kennedy School and was a non-resident Senior Fellow at the Brookings Institution, in Washington, D.C. He served in the secretariats of the OECD, the GATT and the BIS. He was previously a member of the negotiating teams on services and investment of the Canadian Department of Foreign Affairs and International Trade during the NAFTA and Uruguay Round negotiations. He currently advises the World Bank's investment climate team. His teaching and research activities concentrate on trade in services, investment regulation and comparative regionalism.

PART I: OUTLINES BY THE EXPERTS

1 The treatment of services and investment in the CETA (by Pierre Sauvé)

1. CETA motivations

A quest for economic diversification: Canada has long sought to provide the country's goods and services producers with expanded market access opportunities and to reduce the country's high trade dependence on the US market and business cycle. The EU pursued much the same objective but also sought to familiarize itself with a NAFTA-type negotiating landscape ahead of TTIP given strong Canada-US similarities.

CETA offered the EU scope to occupy the new negotiating space afforded by the Lisbon Treaty in the investment field and to revisit the EU's traditional services-investment architecture whilst also experimenting with a number of novel rule-making advances in both areas.

2. Economic determinants

While the Canada-EU economic relationship is strongly asymmetrical, it is far from trivial in the services and investment fields.

The EU exported €15.9 bn worth of services to Canada in 2014, double the amount it did a decade earlier. Canada exported close to €11.3 bn worth of services to the EU in 2013.

The EU runs a consistent (and significant) surplus on its services trade balance with Canada, one that has exceeded its goods trade surplus since 2007.

3. EU-Canada services trade

The composition of EU services exports to Canada has remained rather stable over the past 10 years, with transportation, travel and other business services generally making up around three quarters of EU services exports to Canada.

The most notable changes are the smaller share for travel and the 8 percentage point increase for other business services since 2004, a trend that mirrors the rising salience of remotely supplied services.

Canada's services exports to the EU concentrate in transportation and other business services.

4. EU-Canada investment ties

EU outward FDI stock in Canada, stood at €225 billion at year-end 2013, growing by 17% a year on average since 2004.

Inward FDI stock from Canada stood at around €117 bn in 2013.

The stock of Canadian FDI in the EU represents close to a quarter (24 percent) of total Canadian direct investment abroad.

Meanwhile, 28% of Canada's inward FDI is supplied by EU investors.

5. Compositional swings in EU-Canada FDI

The composition of EU outward FDI stock in Canada has undergone significant change over the past decade.

In 2004, manufacturing accounted for 21% of all EU outward FDI stock in Canada, but this has more than doubled. The share of services declined sharply, from 73% to 35%, during this period. Despite such volatility, both categories still constitute the vast majority of all EU FDI activities in Canada.

Most outward manufacturing FDI is invested in the manufacturing of fuels and chemicals (41 percent) and of metals and machinery (31 percent).

The vast majority of EU outward services FDI in Canada is invested in financial services (70 percent), followed by real estate, renting and other business service activities (20 percent).

Canadian FDI stock in the EU has been dominated by investments in services, which accounts for 77 % of the total on average. Three quarters of this figure (74%) related to financial intermediation. Canadian FDI stock in EU manufacturing is considerably smaller.

6. Characterizing negotiated outcomes on services and investment

CETA marked an important step forward for the EU in its negotiating approach to the nexus between services trade and investment.

CETA marked the first time that the EU tackled both issue areas using a negative list approach; the first time that it agreed to a ratchet clause to automatically lock in future autonomous liberalization in covered areas; and the first time that it made full use of the space afforded to it by the Lisbon Treaty for comprehensive investment rule-making spanning both investment liberalization and protection matters.

For Canada, CETA involved significant NAFTA+ advances in scope and coverage, chiefly via provincial coverage (and the direct participation of provincial governments in the negotiations), with market opening in services also secured via government procurement means and novel regulatory cooperation disciplines, including on mutual recognition, areas in which the EU has significant internal market experience.

CETA also allowed Canada to pursue an ongoing process of incremental change in investment rules with a view to striking a better overall balance between investor and host country rights and obligations, an objective widely shared by the EU.

7. The outcome on trade in services

The services chapters of CETA form the most sophisticated packages ever negotiated by the EU and Canada.

The outcome is significantly WTO/GATS and NAFTA+ (and GATS/NAFTA-X) in character, reflecting latest learning by doing.

Unlike the GATS and its focus on four distinct modes of supplying services, CETA (like NAFTA) distinguishes between two key market access modalities: cross-border supply and investment.

The Agreement's cross-border service provisions are found in several complimentary chapters:

- Chapter 11 on X-border services setting out key disciplines such as national treatment, most favoured nation treatment and the prohibition of quantitative restrictions (subject to reserved measures and sectors listed in Annexes 1 and 2 in Chapter 35);
- Chapter 12 on the temporary movement of service suppliers (so-called Mode 4 trade under the GATS)
- Chapter 13 on disciplines on the mutual recognition of professional qualifications
- Chapter 14 on (non-discriminatory) domestic regulation

- Chapters 15 to 18 addressing the regulatory and/or liberalization specificities of selected service sectors (e.g. finance, maritime, telecoms and e-commerce)
- Chapter 26 on regulatory cooperation
- Chapter 31 on domestic transparency
- Other chapters of relevance relate to competition policy (Chapter 19); state-owned enterprises (chapter 20) and government procurement (Chapter 21)

8. Investment in services

Investment in services is governed by the horizontal provisions found in CETA Chapter 10 on investment, which regulates investment in *all* covered sectors.

Chapter 35 of CETA further allows Canada and the EU to draw up comprehensive negative lists of non-conforming *measures* (Annex 1) which are grandfathered at the prevailing level of non-conformity as well as *sectors* (Annex 2) in which the Parties opt to retain the right to maintain or introduce new non-conforming measures.

9. Exclusions from CETA's services and investment chapters

- Services supplied in the exercise of governmental authority
- Audio-visual services for the EU and cultural industries for Canada
- Air transport services (apart from 5 related sub-sectors)
- Subsidies for services trade
- Government procurement (self-contained in chapter 21)
- Financial services (self-contained in chapter 15)

10. Notable GATS+/GATS-X differences in services

- Ratchet clause
- Higher degree of transparency on the regulatory *status quo* of Parties through their reservation lists (Annexes 1 and 2)
- A detailed set of disciplines and guidelines on the recognition of professional qualifications
- An expanded, WTO/NAFTA+ list of service categories allowed temporary entry privileges, including spousal benefits
- Provisions on regulatory cooperation, including in specific sectors
- Significantly more detailed disciplines on non-discriminatory domestic regulation (likely to be replicated in TISA and the GATS)

11. Policy sensitivities?

- *Public services carve-out*

CETA language mirrors that found in previous PTAs and WTO-GATS, with stronger preambular language on the right to regulate

- *Negative listing*

A first for the EU

The dominant trend in PTAs covering services and investment

Scope to preserve future policy space through Annex II reservations (the CETA equivalent of «unbound» GATS commitments)

- *Ratcheting*

Binding automaticity of autonomously decreed market opening

Lessens the need for subsequent negotiating rounds

But forecloses future policy space, unless Parties reserve that space for future sectors

12. Investment rule-making: contextual considerations

A changed context for investment rule-making – there are some advantages (for the EU) to being a late mover, even as a relative newcomer to comprehensive investment negotiations.

CETA negotiators could take stock of the debates and controversies spawned by a marked rise in investment litigation post-NAFTA

The Agreement was concluded just prior to the greater mobilization the TTIP induced on issues linked to ISDS and reforms of the international investment regime.

Yet those debates continue to resonate as the EP considers CETA (and TTIP):

- Do advanced democracies need ISDS?
- Why should foreign investors be afforded legal means not available to domestic investors?
- How can host states best be held accountable for potential confiscatory or egregious regulatory conduct?
- Would the absence of ISDS in TTIP or CETA dilute the EU's negotiating leverage in investment talks with third countries characterized by weaker governance and judiciaries?

13. Investment rules in CETA: evidence of adaptive capacity?

CETA offered an important opportunity to modernise and streamline the existing fragmented nature of EU investment policy. This process is ongoing and fast moving, as can be seen by the recent Council decision on ISDS in TTIP.

CETA had to contend with many key challenges in contemporary investment rule-making. These include:

- Determining the appropriate level of access to justice: better than national treatment for foreign investors?
- Balancing home vs host state interests in a world in which FDI is no longer a one way street
- Allowing for greater transparency in arbitral proceedings – opening ISDS litigation to the public and encouraging «*friends of the court*» briefs
- Weeding out frivolous claims, ambulance chasers and vulture fund conduct
- Securing greater coherence in arbitral outcomes and developing a code of conduct for arbitrators
- Devising appeals procedures to review first instance panel decisions.

14. Assessing the CETA outcome on investment

The modernisation of the EU investment regime performed in CETA constitutes a progressive, rather than a radical, change. It is a work in progress, as is acknowledged in many provisions calling for further developments or revisions.

CETA attempts to redress the balance between investor protection and the right to regulate in favour of the latter. It does so by circumscribing investor rights through a more 'closed' definition of fair and equitable treatment. It limits the extension of MFN rights to investment liberalization. It also makes the arbitral process more transparent and accountable.

Yet, as the Commission has recognised in its May 2015 Concept paper, more reform is needed.

An important question in looking ahead is whether CETA's investment history can be re-written before it is even enacted? Does the investment chapter need to be reopened in the light of the TTIP mandate? Is the scope provided for endogenous treaty change through docking (future development) provisions adequate?

2 Market access issues in the CETA (by Stephen Woolcock)

An important agreement in the evolution of EU trade and investment policy...

The EU-Canada Comprehensive Economic and Trade Agreement (CETA) is a comprehensive, 'deep' and ambitious agreement. It is the first such agreement concluded with an established, developed economy. As such CETA represents an important stage in the evolution of EU policy on preferential trade and investment agreements (PTAs). As such preferential agreements now dominate international trade and investment policy, CETA represents an important stage in EU policy per se. Canada is of course also a signatory to NAFTA, the other major model for international trade and investment rules in addition to the EU. Therefore CETA can also be seen as model, or a test for how the differences between the NAFTA and EU approaches to trade and investment rules might be reconciled.

The conclusion of CETA is in line with the EU policy on comprehensive PTAs. Canada is an important developed market that has generally outperformed the EU in terms of growth over the past decades. This trend has continued in recent years, with Canada being less hard hit by the post 2008 Global Financial Crisis and recovering better than the EU.

.. that brings economic benefits

CETA will bring economic benefits for both the EU and Canada. Both studies that have been undertaken, to date, of the economic benefits of CETA were concluded before the outcome of the negotiations was known. These studies (the Joint Report of 2008 and the Sustainable Impact Assessment of 2011) also used different methods so are not comparable. The findings suggest however, that there will be positive welfare gains for the EU in the range of \$3.4 billion and \$10 billion. For a second indicator in the form of GDP, both studies also find that CETA will result in benefits. For example, the 2008 study projected a rise of 0.03% for the EU and 0.36% for Canada. The greater rise for Canada is because the EU economy is much larger than Canada's. In terms of the increase in total trade, the 2011 SIA suggested an increase of 0.05% - 0.07% in exports of goods and services to Canada, and a 0.54-1.56% increase in Canadian exports to the EU.

.. consolidates the EU trade surplus in goods with Canada,

The EU has a surplus of trade in goods with Canada, thanks largely to exports of transport equipment, machinery, chemicals and other manufactures. EU exports to Canada increased from almost €17 billion in 1999 to a high of almost €32 billion in 2014. Canadian exports to the EU peaked in 2011, reaching almost €31 billion, after which it dropped to around €27 billion over the last two years. With the exception of 2011, the EU has run a consistent trade surplus, averaging around €3.3 billion per annum. In the period 2007-2008 EU export growth stagnated and dipped in 2009. In 2011, when Canada had a surplus, strong growth in European exports has meant the EU has again registered a bilateral trade surplus above the €4 billion mark since 2013.

.. through ambitious and balanced market opening provisions;

CETA is ambitious in terms of market access for goods and compares favourably with previous EU PTAs. Except for a few exceptions for sensitive sectors, CETA will to remove all existing tariffs on entry into force (EIF) or after a transition period of 3 or 7 years. The EU commits to remove tariffs on 98.6% of all tariff lines, 97.7% of which will go on entry into force of the agreement. Canada will remove tariffs on 98.7% of tariff lines, of which 98.2% on EIF. It should be noted that the MFN tariff for many lines was already zero. There are exceptions for some sensitive goods. In agriculture Canada will remove a lower 91.7% of all agricultural tariffs lines over 7 years and the EU 93.8% over the same period. For sensitive products there are already Tariff Rate Quotas (TRQs) for meat products imported into the EU and for cheese imported into Canada. These will be increased. There is also a quota for automobile imports into the EU with liberal

rules of origin in order to address the integrated nature of the Canadian and US car production. There are also exceptions from full tariff liberalisation for the EU in the fisheries sector.

CETA enhances the means with which to tackle technical and regulatory barriers to trade...

Non-tariff barriers are important in EU – Canada trade. There has been less effort to quantify the impact of these on EU - Canadian trade, than has been the case for TTIP. But given that Canada has largely followed the regulatory approach of the United States the nature and importance of non-tariff barriers (NTBs) is likely to be in the same order of magnitude. Dealing with the trade costs associated with non-tariff barriers (NTBs) and regulatory policies in the EU and Canada will therefore represent an important share of the benefits from CETA. NTBs are, in particular, important for the EU's main exporting sectors.

The CETA chapter technical barriers to trade (TBT) is modest when compared to the equivalent chapters in other EU FTAs, and even more modest than the EU proposal for a TBT chapter in TTIP. But the agreement includes a novel and interesting approach in the shape of the Mutual Recognition Agreement of conformity assessment (MARCA). The MARCA Protocol promises to streamline the designation of conformity assessment bodies (CAB)s and provides clear criteria for the accreditation of CABs. This is important because it reduces costs and offers the prospect of a one-stop-shop for suppliers in EU-Canada trade. As with all measures that address TBTs the effectiveness of this can only be determined in the years following the entry into force of the agreement.

In the related area of sanitary and phytosanitary measures the CETA could be said to have followed a pragmatic approach, aimed at facilitating trade in food and food products. Canada has followed the predominantly science-based approach to risk assessment and management that prevails in North America. This contrasts with the greater emphasis on precaution in the EU. But despite these underlying differences in approach, CETA follows the pragmatism of the 2009 Biotechnology Dialogue. CETA confirms the WTO SPS Agreement, but as with other EU PTAs, it is WTO-plus in a procedural sense in that it establishes the institutions with which the Parties can apply the principles set out in the WTO SPS agreement. CETA also builds on the existing agreement on veterinary equivalence, and promotes trade facilitation in food and food products.

.. to be monitored and promoted by a Regulatory Cooperation Forum.

Chapter 26 of the CETA establishes a horizontal Regulatory Cooperation Forum to oversee the various aspects of regulatory cooperation in TBT, SPS, services, environmental and labour cooperation. The provisions on this Forum appear to be somewhat less developed than those in the EU proposals for a similar Regulatory Cooperation Body in the TTIP.

The principles of regulatory cooperation specified in CETA do not appear to pose a threat to regulatory sovereignty or the maintenance of standards. Article 2 stresses the aim of 'a high level of protection' for social, environment and consumer (SHEIC) policies. Article 2 (7) then reiterates the voluntary basis of Regulatory Cooperation; neither Party is obliged to enter into such cooperation and may refuse to continue or may withdraw. Other principles include openness vis-a-vis third parties wishing to join, promotion of a climate for competitiveness and innovation, the pursuit of regulatory compatibility, recognition of equivalence and convergence.

CETA achieves EU negotiating aims in public procurement . . .

Enhanced access to the Canadian public procurement market, including in particular access to the sub-federal levels of procurement, was a major negotiating aim of the EU. CETA provides full coverage of Canadian procurement, covering federal, provincial and municipal procurement as well as the state owned Crown Corporations, with relatively few explicit exceptions. This advance has been facilitated by the domestic reform process within Canada, and also follows the inclusion of provincial procurement in a bilateral Canadian – US agreement.

The thresholds remain at the level of the WTO's Government Procurement Agreement (GPA), which makes sense in terms of consistency, but it means that a significant share of Canadian procurement will not be subject to the rules. The thresholds for internal trade within Canada remain significantly lower thus providing an effective preference for Canadian suppliers. Having said this, 'indirect' access via affiliates of EU companies in Canada (and vice-versa) will be eased by the general extension of transparency provisions. The introduction of a centralised electronic source for all information on procurement and tenders will, when implemented at the sub-federal level in five years, provide improved information. This will be especially important for EU small and medium sized companies that do not have the resources to invest in local production in Canada to supply that market.

Criticism of the procurement provisions in Canada has focused on the extension of procurement to the MASH entities (municipal, academic, social and health). But the coverage of these is for goods and construction rather than services. Health and other public services remain excluded from coverage. There has also been some criticism of the loss of the ability to provide preferences to small local suppliers to sub-central government. However, it should be recalled that a significant share of this procurement will be below the threshold of CETA.

In terms of contract award criteria the standard 'most advantageous tender' wording is included. The definition of 'most advantageous' remains as in other cases open to some interpretation. CETA makes explicit reference to environment and conservation of natural resources as being encompassed by this, but not to employment laws/collective bargaining

The implications for the EU in procurement are likely to be limited in the sense that CETA does require change the EU procurement rules. The existing *de facto* transparency of the EU procurement market means there will be little change. EU schedules will however, be extended to include coverage of additional entities for Canadian suppliers. This means more coverage for energy utilities and sub-central service procurement than is currently offered by the EU to Canada under the GPA.

.. and Geographic Indications (GIs)

In the field of intellectual property rights a key EU interest was in gaining better protection for EU GIs. In this area as in others, Canada has followed the US in arguing that GIs can be protected under existing trademark law. The EU has been seeking a *sui generis* protection for GIs. In this topic the CETA is again pragmatic in that CETA provides protection equivalent to that offered by the EU for 145 GI's, mostly in meats, beers and cheeses. But it does not satisfy the EU aim of establishing a *sui generis* regime.

... and a predominantly EU approach to Sustainable Development

The approach to sustainable development, in other words the promotion of environmental and labour standards, follows the EU approach of peer review with recourse to a special panel of experts if required. The panel of experts is then tasked with providing a report and recommendations in the case of a Party failing to comply with the provisions on environment and labour standards. These requirements, as in all EU PTAs, are that the Parties comply with Multilateral Environment Agreements and Core International Labour Organisation standards that they have ratified. Canada has ratified almost all ILO Conventions and all but two of the core labour standards.

This approach differs from the 'NAFTA model', which envisages a more legalistic dispute settlement procedure.

In short CETA provides a benchmark in terms of ambitious market opening, combined with rulemaking that reflects both developments in the international economy and the desire to defend legitimate public policy objectives.

2.1 Powerpoint presentation

The EU – Canada Comprehensive Economic and Trade Agreement CETA: presentation for the INTA Workshop 9th December 2015

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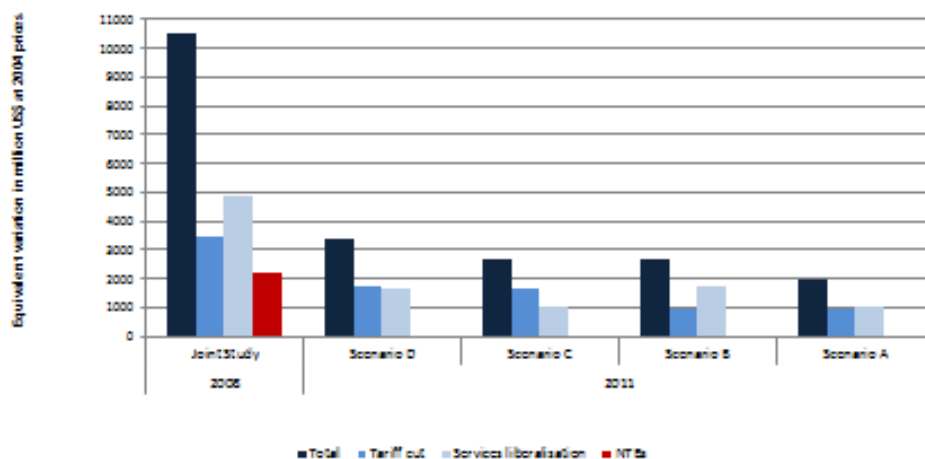
Steve Woolcock, London School of Economics
s.b.woolcock@lse.ac.uk



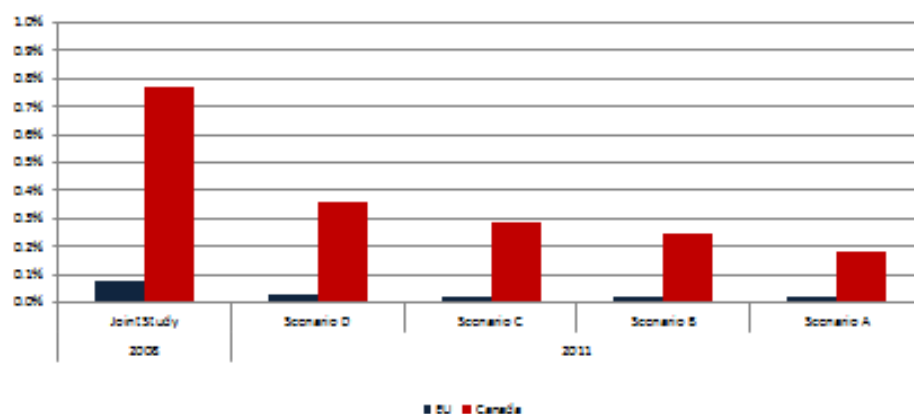
CETA: consistent with EU policy

- First PTA with an established developed economy
- Important growing market
- Welfare gains for both EU and Canada
- EU surplus in goods, services and investment stock
- Enhanced market access will lead to increased trade
- Progress in 'rulemaking' (procurement, GIs, conformance assessment and investment)

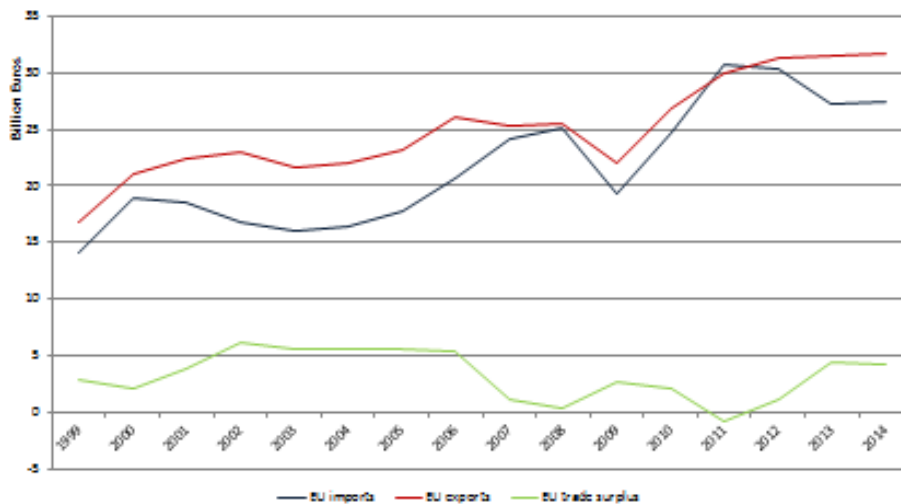
Welfare gains for the EU: but ex anti projections inconsistent



Projected gains in real GDP: reasonable and possibly an underestimate



EU goods surplus with Canada



Tariffs

- Industrial goods tariffs – near 100% tariff free after transition
- Agricultural tariff lines – 94% (EU) and 92% (CAN) and expanded TRQ for sensitive products
- No export subsidies for liberalised products, but domestic subsidies not affected

Regulatory cooperation

- Technical barriers to trade assume greater importance
- Not assessed in ex anti studies; but likely to be significant
- CETA establishes Regulatory Cooperation Forum
 - Covering TBT, SPS, services, environment and labour
 - No law making powers or limits on legislative or policy space
- Protocol on Mutual acceptance of results of conformance assessment and accreditation of testing bodies

Sanitary and phytosanitary measures

- Confirmation of WTO approach
- Pragmatic cooperation and facilitation of trade
- Based on Veterinary Equivalence Agreement of 1998 and
- Biotech Dialogue of 2009 on GM crops (e.g. seeking solution to Low Level Presence issue)

Geographic indications progress for EU

- Important offensive interest
- Canada followed US approach (trade mark law)
- CETA protection for 145 GI's equivalent to EU and further 21 partially
- Focus on most important products for EU exports (cheese, beer, meats)
- Does not set precedent for sui generis protection for GIs

Public procurement

- Key EU negotiating aim of sub-federal coverage achieved
- Greater confidence of fair treatment
- Rules as in WTO Govt. Procurement Agreement
- No quantitative assessments of impact (SIA est C\$ 31 billion market but C\$3-4 billion above thresholds)
- Central digital access point (after 5 years for all)
- Increased coverage facilitated by Canadian reforms
- Criteria 'most advantageous tender' (explicit reference to environment and conservation, but not to employment laws/collective bargaining)

Sustainable development

- CETA approach in line with EU rather than NAFTA
- Peer review with recourse to panel of experts
- Report and recommendations
- Civil Society Forum as basis for joint efforts
- Shared values between EU and Canada should be favourable to this
- NAFTA sanctions based approach only so good as ratification in domestic law (of core ILO standards)
- In Canada 2 outstanding (right to organise and collective bargaining and minimum age)

Other IPR issues

- Canada seem to be lagging prevailing norms in some areas of IPR relating to pharmaceutical
- Patent term restoration
 - EU is 5 years CAN offered 2 CETA offers 2-5 years
- Data protection relating to clinical trials and regulation of generic medicines
 - EU has 10 years (8+2) CAN 8 years (6+2) CETA confirms these Chapter 22 Art 10
- Equal right to appeal decisions approving generic products
 - Not previously under Canadian law but CETA requires this

Services and Investment

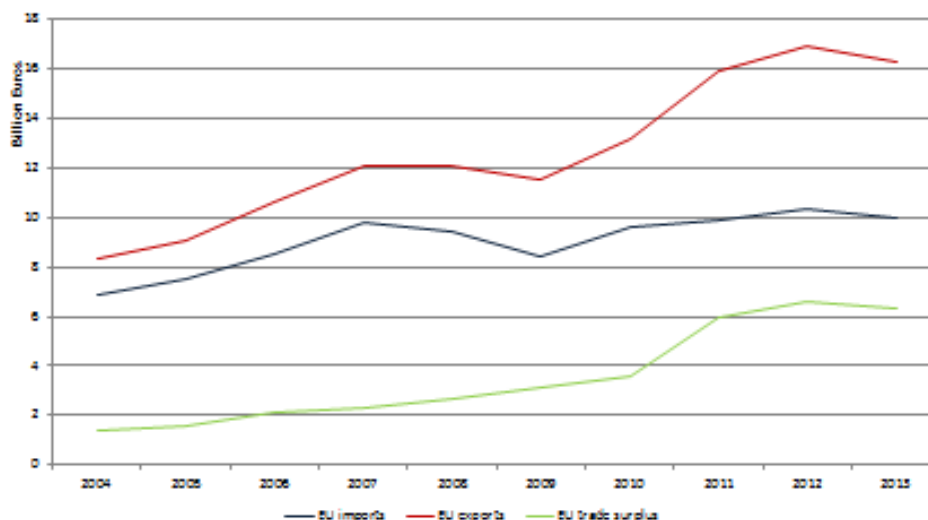
Motivations

- Contending with the reality of negotiating asymmetries among partners with demonstrated rule-making capacity.
- A quest for economic diversification: Canada has long sought to provide the country's goods and services producers with expanded market access opportunities and to reduce the country's high trade dependence on the US market and business cycle.
- The EU pursued much the same objective but also sought to familiarize itself with a NAFTA-type negotiating landscape ahead of TTIP given strong Canada-US similarities.
- CETA offered the EU scope to occupy the new negotiating space afforded by the Lisbon Treaty in the investment field and to revisit the EU's traditional services-investment architecture whilst also experimenting with a number of novel rule-making advances in both areas.

Economic determinants

- While the Canada-EU economic relationship is strongly asymmetrical, it is far from trivial in the services and investment fields.
- The EU exported €15.9 bn worth of services to Canada in 2014, double the amount it did a decade earlier. Canada exported close to €11.3 bn worth of services to the EU in 2013.
- The EU runs a consistent (and significant) surplus on its services trade balance with Canada, one that has exceeded its goods trade surplus since 2007.

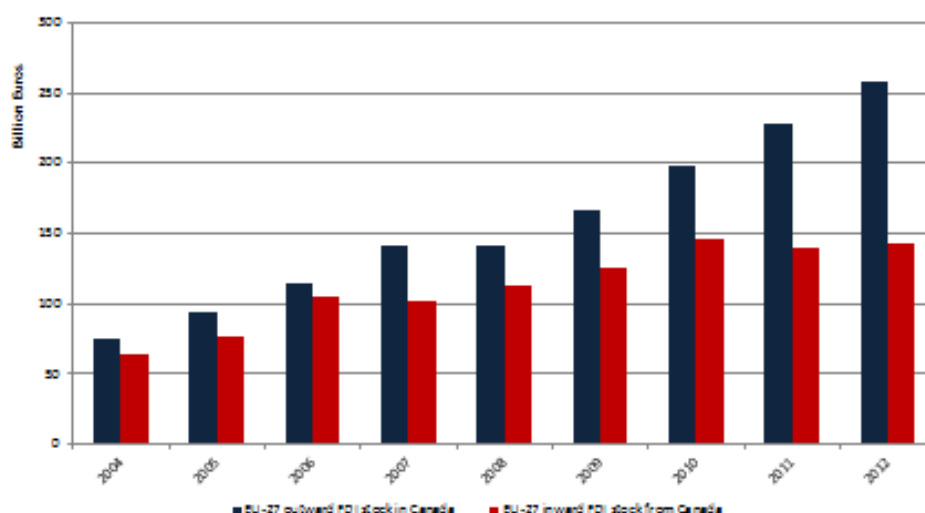
EU services surplus



EU-Canada services trade

- The composition of EU services exports to Canada has remained rather stable over the past 10 years, with transportation, travel and other business services generally making up around three quarters of EU services exports to Canada.
- The most notable changes are the smaller share for travel and the 8 percentage point increase for other business services since 2004, a trend that mirrors the rising salience of remotely supplied services.
- Canada's services exports to the EU concentrate in transportation and other business services.

A growing investment relationship



Canada-EU investment ties

- EU outward FDI stock in Canada, stood at €225 billion at year-end 2013, growing by 17% a year on average since 2004.
- Inward FDI stock from Canada stood at around €117 bn in 2013.
- The stock of Canadian FDI in the EU represents close to a quarter (24 percent) of total Canadian direct investment abroad.
- Meanwhile, 28% of Canada's inward FDI is supplied by EU investors.

Compositional swings in EU-Canada FDI

- The composition of EU outward FDI stock in Canada has undergone significant change. In 2004, manufacturing accounted for 21% of all EU outward FDI stock in Canada, but this has more than doubled.
- The share of services declined sharply, from 73% to 35%, during this period.
- Despite such volatility, both categories still constitute the vast majority of all EU FDI activities in Canada.
- Most outward manufacturing FDI is invested in the manufacturing of fuels and chemicals (41 percent) and of metals and machinery (31 percent).
- The vast majority of EU outward services FDI in Canada is invested in financial services (70 percent), followed by real estate, renting and other business service activities (20 percent).
- Canadian FDI stock in the EU has been dominated by investments in services, which accounts for 77 % of the total on average. Three quarters of this figure (74%) related to financial intermediation. Canadian FDI stock in EU manufacturing is considerably smaller.

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Characterizing negotiated outcomes on services and investment

CETA: A novel and ambitious agreement in services trade and investment regulation

- CETA marked an important step forward for the EU in its negotiating approach to the nexus between services trade and investment.
- CETA marked the first time that the EU tackled both issue areas using a negative list approach; the first time that it agreed to a ratchet clause to automatically lock in future autonomous liberalization in covered areas; and the first time that it made full use of the space afforded to it by the Lisbon Treaty for comprehensive investment rule-making spanning both investment liberalization and protection matters.
- For Canada, CETA involved significant NAFTA+ advances in scope and coverage, chiefly via provincial coverage (and the direct participation of provincial governments in the negotiations), with market opening in services also secured via government procurement means and novel regulatory cooperation disciplines, including on mutual recognition, areas in which the EU has significant internal market experience.
- CETA also allowed Canada to pursue an ongoing process of incremental change in investment rules with a view to striking a better overall balance between investor and host country rights and obligations, an objective widely shared by the EU.

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The outcome on trade in services

- The services chapters of CETA form the most sophisticated packages ever negotiated by the EU and Canada.
- The outcome is significantly WTO/GATS and NAFTA+ (and GATS/NAFTA-X) in character, reflecting latest learning by doing.
- Unlike the GATS and its focus on four distinct modes of supplying services, CETA (like NAFTA) distinguishes between two key market access modalities: cross-border supply and investment.

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The Agreement's cross-border service provisions are found in several complimentary chapters

- Chapter 11 on X-border services setting out key disciplines such as national treatment, most favoured nation treatment and the prohibition of quantitative restrictions (subject to reserved measures and sectors listed in Annexes 1 and 2 in Chapter 35);
- Chapter 12 on the temporary movement of service suppliers (so-called Mode 4 trade under the GATS)
- Chapter 13 on disciplines on the mutual recognition of professional qualifications
- Chapter 14 on (non-discriminatory) domestic regulation
- Chapters 15 to 18 addressing the regulatory and/or liberalization specificities of selected service sectors (e.g. finance, maritime, telecoms and e-commerce)
- Chapter 26 on regulatory cooperation
- Chapter 31 on domestic transparency
- Other chapters of relevance relate to competition policy (Chapter 19); state-owned enterprises (chapter 20) and government procurement (Chapter 21)

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Investment in services...

- ...is governed by the horizontal provisions found in CETA Chapter 10 on investment, which regulates investment in *all* covered sectors.
- Chapter 35 of CETA further allows Canada and the EU to draw up comprehensive negative lists of non-conforming *measures* (Annex 1) which are grandfathered at the prevailing level of non-conformity as well as *sectors* (Annex 2) in which the Parties opt to retain the right to maintain or introduce new non-conforming measures.

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Exclusions from CETA's services and investment chapters

- Services supplied in the exercise of governmental authority
- Audio-visual services for the EU and cultural industries for Canada
- Air transport services (apart from 5 related sub-sectors)
- Subsidies for services trade
- Government procurement (self contained in chapter 21)
- Financial services (self contained in chapter 15)

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Notable WTO+/WTO-X departures

- Ratchet clause
- Higher degree of transparency on the regulatory *status quo* of Parties through their reservation lists (Annexes 1 and 2)
- A detailed set of disciplines and guidelines on the recognition of professional qualifications
- An expanded, WTO/NAFTA+ list of service categories allowed temporary entry privileges, including spousal benefits
- Provisions on regulatory cooperation, including in specific sectors
- Significantly more detailed disciplines on non-discriminatory domestic regulation (likely to be replicated in TISA and the GATS)

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Policy sensitivities

- **Public services carve-out**
 - CETA language mirrors that found in previous PTAs and WTO-GATS, with stronger preambular language on the right to regulate
- **Negative listing**
 - A first for the EU
 - The dominant trend in PTAs covering services and investment
 - Scope to preserve future policy space through Annex II reservations (the CETA equivalent of «unbound» GATS commitments)
- **Ratcheting**
 - Binding automaticity of autonomously decreed market opening
 - Lessens the need for subsequent negotiating rounds
 - But forecloses future policy space, unless Parties reserve that space for future sectors

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Investment rule-making: contextual considerations

- A changed context for investment rule-making – there are some advantages (for the EU) to being a late mover, even as a relative newcomer to comprehensive investment negotiations.
- CETA negotiators could take stock of the debates and controversies spawned by a marked rise in investment litigation post-NAFTA
- The Agreement was concluded just prior to the greater mobilization the TTIP induced on issues linked to ISDS and reforms of the international investment regime.
- Yet those debates continue to resonate as the EP considers CETA (and TTIP):
 - Do advanced democracies need ISDS?
 - Why should foreign investors be afforded legal means not available to domestic investors?
 - How can host states best be held accountable for potential confiscatory or egregious regulatory conduct?
 - Would the absence of ISDS in TTIP or CETA dilute the EU's negotiating leverage in investment talks with third countries characterized by weaker governance and judiciaries?

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Investment rules in CETA: evidence of adaptive capacity?

- CETA offered an important opportunity to modernise and streamline the existing fragmented nature of EU investment policy.
- This process is ongoing and fast moving, as can be seen by the recent Council decision on ISDS in TTIP.

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Challenges in contemporary investment rule-making

- Determining the appropriate level of access to justice: better than national treatment for foreign investors?
- Balancing home vs host state interests in a world in which FDI is no longer a one way street
- Allowing for greater transparency in arbitral proceedings – opening ISDS litigation to the public and encouraging «*friends of the court*» briefs
- Weeding out frivolous claims, ambulance chasers and vulture fund conduct
- Securing greater coherence in arbitral outcomes and developing a code of conduct for arbitrators
- Devising appeals procedures to review first instance panel decisions

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Assessing the CETA outcome on investment

- The modernisation of the EU investment regime performed in CETA constitutes a progressive, rather than a radical, change. It is a work in progress, as is acknowledged in many provisions calling for further developments or revisions.
- CETA attempts to redress the balance between investor protection and the right to regulate in favour of the latter.
- It circumscribes investor rights through a more 'closed' definition of fair and equitable treatment.
- It limits the extension of MFN rights to investment liberalization.
- It makes the arbitral process more transparent and accountable.
- Yet, as the Commission has recognised in its May 2015 Concept paper, more reform is needed.
- Can CETA's investment history be re-written before it is even enacted? Does the investment chapter need to be reopened in the light of the TTIP mandate? Is the scope provided for endogenous treaty change adequate?

Summing up

- CETA is in line with EU policy on PTAs
- Ambitious in scope but also pragmatic in allowing the Parties to differ on sensitive topics
- Welfare-enhancing and trade-creating, but relatively modestly so
- Modernisation and/or adoption of current practices/latest trends in rule-making

PART II: SUMMARY OF THE WORKSHOP

The Chair of the INTA Committee, MEP Bernd Lange, opened the workshop by welcoming Commissioner Cecilia Malmström, the two chief negotiators, Mr. Mauro Petriccione from the European Commission and Mr. Steve Verheul from Canada, as well as the two independent experts, Dr Stephen Woolcock and Pierre Sauvé.

Commissioner Malmström stressed that CETA was the most significant free trade agreement (FTA) the EU had negotiated. It was with a major economic player and agreements with such strategic partners constitute a vital means of ensuring the EU remains connected with the global economy.

CETA is ambitious with regard to market access and tariff liberalisation promises to save EU exporters EUR 450million in tariffs each year. The provisions on public procurement are the most ambitious and comprehensive the EU has ever negotiated with any trading partner, and will help EU suppliers in a range of sectors, from railway equipment to major infra-structure projects.

In services, which account for more than half of EU exports and are increasingly integrated with the goods sector, there are many economic benefits. Such sectors are dredging, qualified professionals and ground handling in aviation.

Another big achievement was in the chapter on intellectual property rights, where the EU - amongst others - was able to get protection for 145 EU Geographical Indications (GIs) covering key EU exports such as cheese and meats.

CETA also addresses regulatory barriers to trade and will reduce the administrative hurdles facing suppliers by enabling EU certification to be accepted by Canada and vice versa. In the drinks sector, Canada will end the obligation to blend EU spirits in Canadian ones.

The Commissioner has listened to the concerns and worries expressed on public services, regulation and investment protection. On these topics Commissioner Malmström stressed that nothing in CETA prevents the regulation of public services or limits the right to regulate by the government. On investment, she stressed the progress in CETA on transparency, the right to regulate, the code of conduct for arbiters and the review mechanism. The Commission will also seek to use the process of legal scrubbing as to see how CETA can be aligned with the more recent policy of the EU on investment. But this will need to be done carefully.

Finally, the EU seeks to defend, through the inclusion of specific clauses in its trade agreements, labour and environmental rights in a changing world. On this issue, the EU is confident it can cooperate with Canada that shares common values with Europe. Canada like the EU is a multilingual society that places priority on collective approaches.

In the following question and answer session, MEP Daniel Caspary EPP, declared that the Commission had delivered all that the Parliament had asked for in CETA and questioned why there was discussion of additional changes. He also asked if the Commission could provide some detail of the benefits in the field of GI protection, in particular for SMEs (small and medium-sized enterprises).

MEP Maria Arena (S&D) raised a question about scheduling for services. Was negative listing not a retrograde step? Was the 'ratchet' provision for Annex 1 not anti-democratic? She also argued that the ISDS provision needed modifying not 'fine tuning'.

MEP Marietje Schaake (ALDE) thought that CETA and TTIP should be seen as different things. CETA negotiations were finished and the legal scrubbing could not change one part of the agreement more than any other. She asked what a change of the investment provisions resulting from the legal scrubbing would mean for the position of the Canadian government.

MEP Christofer Fjellner (EPP) argued that the challenge for the Parliament was bigger than CETA, it is to maintain the credibility of the European Union in trade policy. The CETA should be ratified as soon as possible to ensure that the EU continues to be seen as a credible trading partner.

Some questions from other participants followed.

A representative from the public service unions pointed out that the 2011 sustainable impact assessment of CETA did not recommend the inclusion of ISDS.

A representative from the European Services Forum thought CETA was a very good agreement and should be passed as soon as possible.

A representative from the Belgian 'Stop TTIP, Stop CETA' asked about the investment court system and argued that ISDS created a structural incentive favouring investors over states.

There were also questions on whether CETA was a mixed agreement, and whether having the right to regulate in a preamble does not mean it is less important than the protection for investors.

Commissioner Malmström responded by saying that CETA was completed and would not be reopened. On the scheduling, she argued that the Commission negotiated on the basis of the preferences of the Member States, and could not second guess these. If Member States chose to open a service sector, the Commission cannot disregard this decision.

Mr Verheul from Canada said that the new Canadian government wished to see the early adoption of CETA and supported it more enthusiastically than the TPP (Trans Pacific Partnership). In this, it reflects the views of most Canadians, who are 85 % of European origin and hold similar views on the role of government in society with the Europeans.

Canada is interested in diversifying its trade by trading more with the EU and strengthening its political links through the Strategic Partnership Agreement (SPA), initialled in November 2014.

CETA should not be seen as a precursor to TTIP. It is a progressive, ambitious and modern agreement in its own right.

CETA poses no threat to EU standards. Canada has never asked for any EU standards to be changed, nor has the EU asked for any Canadian standards to be changed. On sensitive issues such as hormones in beef, Canada will be pragmatic and will separate herds of hormone free cattle.

On services, public services have been excluded.

Business mobility has been improved.

On investment, CETA has moved a long way from NAFTA to make improvements. Canada is open to the inclusion of the 'right to regulate' in the text, because it has the same interests as the EU. But there is a need to recognise the dangers of renegotiation that can upset the balance of the agreement.

On public procurement, Canada has opened up its market of EUR 135billion providing a single point of access for EU suppliers; patent and copyright law has been updated and 145 EU GIs protected.

On sustainable development, CETA is the first time that the Canadian provinces have endorsed such provisions in an FTA. In this context, the domestic legal structures have to be respected.

The two independent experts, Stephen Woolcock (London School of Economics) and Pierre Sauvé (World Trade Institute) then assessed the market opening and services as well as investment provisions.

On market opening, Woolcock was of the view that CETA is an important agreement in the evolution of EU trade policy that brings economic benefits for both parties and consolidates EU – Canadian trade and investment relations. He argued that these were in structural balance so that the trade growth predicted from CETA will benefit both parties. The market access provisions as ambitious within the order of 98 % of

tariff lines to be liberalised (many products already had zero MFN tariffs), but with enlarged Tariff Rate Quotas for sensitive products (such as meat for the EU and cheese for Canada).

CETA enhances the ability to address non-tariff barriers through the establishment of a Regulatory Cooperation Forum and in particular the MARCA Protocol (on mutual recognition of conformity assessment). In the related field of SPS (sanitary and phytosanitary measures) CETA follows the pragmatic approach of the EU – Canada Biotechnology Dialogue.

On procurement, the CETA is ground breaking in its coverage of all levels of procurement at federal, provincial and municipal levels. The inclusion of these levels was a major EU negotiating aim. It has been facilitated however, by domestic reform in Canada. Access for SMEs in the Canadian market will be enhanced by the single electronic portal for all procurement.

Finally, on sustainable development CETA is consistent with the approach followed in all previous EU FTAs, which is one of promoting and facilitating labour and environmental standards and objectives through cooperation and peer review mechanisms. Given the shared cultural and social values of the EU and Canada, cooperation in this area should be more than possible.

Pierre Sauv  then discussed the services and investment issues, which he thought were rightly dealt with together in the agreement. He stressed that the benefit of negative listing was in providing greater transparency for all concerned. In principle there is no reason why negative listing should be more or less liberal than positive listing. The use of the two-schedule system with annex 2 provided the means of indicating areas that were not bound.

He explained the ambiguity on the issue of ratcheting, on the one hand it provided certainty, but on the other hand it is debatable that a sector or activity should be automatically liberalised as a result of autonomous (unilateral) liberalisation.

On investment, the debate has gathered steam post CETA, which has been overtaken by events. Had this not been the case, CETA would have been seen as a state of the art agreement in investment. It includes a range of provisions that modernise and clarify investment protection and the arbitration provisions.

A further round of questions and answers followed that included the following:

- Was there not an inherent conflict between the right to regulate and the ‘ratchet’ mechanism?
- Does increased trade not mean increased pollution/carbon emissions?
- Was it not the case that the rail sector cannot now be regulated or taken into public ownership?
- What were the criteria for contract awards in procurement and did these include employment provisions?
- How did CETA affect the ability to award internal contracts in public procurement?

Mr Petriccione asked that the debate be put into the right context. Governments do not have the right to regulate they have a duty to regulate. Nothing in any agreement will change this. There is no limitation on the ability of any Member State to take a sector into public ownership, the only thing you cannot do is do so without compensation.

On scheduling he reiterated the point that Member States make choices about which sectors (in services) should be public. The Commission cannot make that decision and so must reflect the preferences of the Member States in negotiations.

MEP Artis Pabriks (EPP) (Rapporteur for CETA in the INTA Committee) closed by arguing:

- that CETA had indeed achieved the aims set for it by the European Parliament, so it was incumbent on the EP to now ratify the agreement as quickly as possible;

- there should be no postponement and CETA should be brought back to the Parliament as early as possible in 2016;
- the review mechanism included in the agreement should be used to up-date anything that needs up-dating.

The meeting was closed by the Chair expressing his thanks to the speakers and to those who contributed to the discussion through their questions.

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