Chapter 9

CETA and TIIP: Implications and Lessons Learned

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Getting it Done

Canadian Prime Minister Stephen Harper and European Commission President José Manuel Barroso announced an agreement in principle on a Comprehensive Economic and Trade Agreement (CETA) on October 18, 2013. The European Commission and Canadian Government have both released explanatory documents, and the final document is also now available. The agreement will remove over 99% of tariffs between the two economies and open new opportunities in services and investment. Once implemented, the agreement is expected to increase two-way bilateral trade in goods and services by 23%. CETA is a forward-looking agreement that includes built-in review. The agreement opens Canadian provincial and municipal procurement estimated at $100 billion and, for Canadians, the $2.7 trillion EU government procurement market.

While the final document has now been negotiated, the October announcement was premature by normal standards and motivated by Canadian domestic political imperatives, including the return of Parliament and the Conservative party policy convention. There was also a sense that EU patience for continued negotiations was at an end. After any last-minute clarifications are made to the final negotiated text, there will be a legal "scrub" and then translation of the document into 24 languages. Based on the EU's bilateral agreements with Colombia, Peru, and South Korea, this step could take up to a year. As a requirement of such a free trade agreement, the Europeans also insist on conclusion of a potentially politically-sensitive Strategic Partnership Agreement on foreign policy and sectoral cooperation.

With the February 2013 State of the Union announcement by President Obama of the EU-U.S. Transatlantic Trade and Investment Partnership (TTIP) negotiations, EU negotiators turned their attention to the new deal. There was a strong risk that the Canadian deal could become stranded. The Canadian business community called on the government for a "rapid and successful conclusion" of a deal most thought could have been done in the spring. Before the agreement comes into force it will need to be approved by the European Council, then the European Parliament, followed by ratification, as appropriate, by member states. European Parliament elections in May 2014 have altered the makeup of its trade committee, which had been a strong supporter of an agreement. On the Canadian side, implementing legislation needs to be passed by both the federal parliament and provincial legislatures. The entire implementation could take 2–3 years, although provisional application of most of the agreement could begin earlier.

The CETA process began in Berlin at the 2007 EU-Canada Summit when leaders agreed to a joint study examining the costs and benefits of a closer economic partnership. After review at the 2008 Canada-EU Summit, a "Scoping Exercise" (Joint Report on the EU-Canada Scoping Exercise) set the parameters for the negotiations that began at the EU-Canada Summit on May 6, 2009 in Prague. The EU subsequently (June, 2011) conducted a Sustainability Impact Assessment (SIA) on the CETA's social, environmental and economic impact. Within Canada, the Standing Committee on International Trade conducted hearings on the proposed agreement in 2011 and released their report in March, 2012 with the Government response following in June, 2012. The committee is currently conducting hearings into the agreement.

The European Union is the world's largest single common market comprising 28 member states, a total population of over 500 million, and a GDP of $17.4 trillion. Canada, a confederation of ten provinces and three territories, has a population of 35 million with a GDP of $1.8 billion. As a bloc, the EU represents Canada's second largest trading partner (after the United States) with around 9.5% of Canada's total external trade. Canada is the EU's twelfth largest trading partner accounting for 1.8% of the EU's total external trade. It is estimated that 375,000 Canadian jobs rely on trade with the EU. European investment in Canada is worth more than $171 billion, representing over 24% of total foreign investment in Canada, while Canadian direct investment in the EU amounted to $181 billion in 2012, representing over 28% of Canadian direct investment abroad.

The top 10 Canadian exports to the EU in 2012 were gold, crude petroleum, diamonds, iron ore, uranium, nickel, aircraft, soya beans, coal and copper. Top ten EU exports were: drugs, luxury cars, light and crude petroleum, wines, medical instruments, motor vehicles, aircraft and machinery parts, and wind generators.

The 2008 joint report predicts that within seven years of implementation annual real income gains will be approximately €11.6 billion for the EU and €8.2 billion for Canada. Canadian exports to the EU are predicted to increase by 20.6% or €8.6 billion while EU exports to Canada are estimated to rise by 24.3% or €17 billion. These figures represent gains resulting from the elimination of tariffs, the liberalization of trade in services, and cost savings from fewer non-tariff barriers. Half of the expected GDP gains for the EU are related to trade in services and a quarter to the removal of tariffs. The remaining 25% will occur with the removal of non-tariff barriers (NTBs) and result in a €2.9 billion gain for the EU and €1.7 billion for Canada. The Canadian Government's CETA Summary says the gains are the economic equivalent of adding $1,000 to the average Canadian family's income and almost 80,000 new jobs to the Canadian economy. The prior arrangements for Canada-EU trade were governed by the GATT/WTO and the 1975 Framework Agreement for Commercial and Economic Cooperation that established annual EU-Canada summits. Subsequent agreements covered customs administration (1997), trade in live animals and animal products (1999), Wine and Spirits Agreement (2003), the Civil Aviation Safety Agreement (2009) and the Comprehensive Air Transport Agreement (2009).

What the Agreement Does[1]

Trade in Goods

Tariff Elimination: When implemented, CETA will ensure that Canada and the EU provide each other's goods with "national treatment" aside from customs duties and other fees allowed by the World

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[1]This draws heavily from the post-announcement summaries released by the EU - Facts and Figures, and Canadian Agreement Overview. The most detailed summary of this still-to-be-completed agreement can be found in the Canadian Technical Summary of Final Negotiated Outcomes. There is also useful testimony before the Canadian House of Commons Standing Committee on International Trade in its examination of CETA.

Trade Organization (WTO). CETA's rules of origin are intended to reflect global value chains and the reality that goods are made from parts or ingredients ("inputs") sourced from many countries.

Duties will be eliminated on 98% of over 9,000 tariff lines. This includes nearly 100% of non-agricultural tariff lines and close to 94% of agricultural tariff lines. Once CETA is fully implemented, approximately 99% of the EU's tariff lines will be duty-free, including 100% of more than 7,000 non-agricultural tariff lines and over 95% of more than 1,900 agriculture tariff lines. Another 1% of tariffs will be eliminated over a period of up to seven years.

The EU reckons it will save exporters around €500 million in industrial duties annually, and sees new opportunities especially in consumer goods, e.g. the upper end of the clothing market and items like perfume. By the end of the transitional periods, Canada and the EU will liberalize, respectively, 92.8% and 93.5% of trade lines in agriculture.

Tariffs phased-out by the EU include those on some fish and seafood products, grains and passenger vehicles. This includes transitional tariff rate quotas (TRQs) for key Canadian exports (23,000 tons of shrimp and 1,000 tons of cod). Canadians also see new opportunities on exports of minerals (e.g. aluminum, nickel). Canadian tariffs that will be phased-out include those on passenger vehicles (three, five and seven years), certain agricultural goods (three, five and seven years) and ships (three and seven years).

Canadian dairy products and EU beef, pork and sweet corn will get tariff rate quota access increases amounting to a further 1% and 1.9% of tariff lines respectively. There are gains for Canadian beef and pork producers. Canadian consumers should get both more choice and a better price on with the bigger quota for EU cheese (an additional 4% access after phase-in). Canadian tariffs on EU prepared agricultural products (PAPs), notably wine (EU provides half of Canadian wine imports) will be eliminated as will other relevant trade barriers.

Besides eliminating tariffs, the EU processing industry will gain better access to Canadian fish. Sustainable fisheries, with commitment to monitoring, control and surveillance measures, will be developed.

Non-Tariff Barriers (NTBs): CETA builds on existing rules contained in the WTO Agreement on Technical Barriers to Trade (TBT). The TBT chapter commits to recognition of equivalency and conformity assessment (including marking and labeling provisions) by standard-setting bodies. As appropriate, interested persons in either Canada or the EU will be able to participate in TBT-setting exercises. This should reduce the cost of complying with technical regulations. The EU reckons this will give it GDP gains of up to €2.9 billion.

Regulatory Cooperation: CETA is the first bilateral trade agreement in which Canada has included provisions on regulatory cooperation. Canada and the EU will identify joint cooperative activities and establish an annual high-level dialogue on regulatory matters.

Automotive Sector: Canada will recognize a list of EU car standards and look positively to future standards. CETA interpretation of rules of origin should allow 100,000 of Canada's NAFTA-mobiles (cars assembled in Canada with U.S. and Mexican parts) to be accepted duty-free in the EU every year.

Sanitary and Phytosanitary (SPS): The existing Veterinary Agreement is updated. A new SPS Measures Joint Management Committee provides a venue for experts to discuss issues before they become major problems and to determine which Canadian and EU inspection standards and certification systems both parties can accept as being equivalent to their own. Decisions are to be made based on science. This is especially important for Canada's grain industry. In 2012, Canada had the fourth-largest area planted to biotech crops worldwide, with 97.5% of Canadian-grown canola planted with biotech varieties.

Subsidies: Canada and the EU have agreed to comply with WTO disciplines on subsidies, except in the case of agricultural export subsidies on bilateral trade that are prohibited for all agricultural products where tariffs are eliminated (thus precluding EU export subsidies in Canada-U.S. trade for wheat and coarse grains). Both accept WTO obligations to be transparent and to accept consultations on subsidy programs.

Trade Remedies: CETA reflects WTO rules requiring fair and transparent investigation to determine whether unfair trade is taking place before the country imposes a trade remedy.

Investment, Services and Other Matters

Trade in services: Accounting for over 70% of Canada's GDP, the services sector is by far the largest part of Canada's economy. This is equally important to the EU. Expanded trade in services in key sectors such as financial services, telecommunications, energy and maritime transport will provide half of the EU's overall GDP gains (with potential annual gains of up to €5.8 billion). As in all of its free trade agreements, Canada has excluded key services including health care, public education and other social services.

Temporary movement of company personnel: CETA's temporary-entry provisions will expand on existing WTO access, making it easier to temporarily move staff between the EU and Canada. A framework will facilitate temporary travel or relocation for selected categories of business persons (managers, professionals and trainees), including short-term business visitors, investors, intra-company transferees, and professionals and technologists. Certain professional categories (e.g. engineering, accounting, architecture) will have easier access to temporarily supply consulting services and after-sales maintenance and monitoring commitments.

Mutual recognition of qualifications: CETA looks to future mutual recognition of qualifications in professions including architects, engineers, foresters and accountants. CETA is the first Canadian free trade agreement to include substantive and binding provisions on the mutual recognition of professional qualifications. Under NAFTA there were a host of working groups. If business is wise and active, the provisions in CETA provide an opportunity to assess conformity of Canadian products with EU technical regulations and streamline.

Investment: Combined EU and Canadian FDI stocks amounted to €360 billion in 2011. CETA will remove or alleviate barriers to investment horizontally and in specific sectors. There is an investor-to-state dispute settlement (ISDS) mechanism with protections against abuse and frivolous claims. This includes an independent arbitration panel hearing facts and making a decision on the merits of an investor's claim with the participation of non-disputing parties.

ISDS rules have been a standard feature of Canada's comprehensive free trade agreements since the North American Free Trade Agreement. CETA protects the *Investment Canada Act* (ICA) and the government's right to conduct reviews of high-value investments to ensure that they are of net benefit to Canada. Ministerial decisions on whether or not to permit investments under the ICA, including for national security reasons, are not subject to CETA dispute settlement.

There are two types of reservations for services and investment provisions: Annex II reservations provide complete policy flexibility; Annex I reservations mean that any unilateral liberalization made over a period of time would be captured and locked in at that new level of liberalization.

The special investment rules for the EU, allowing for an increased review threshold under the Investment Canada Act, should also extend to investors from other countries with which Canada has trade agreements with investment protection provisions i.e. the United States and Mexico under NAFTA, but also Colombia, Peru, Chile and Panama. There is a potential opening up of investment flows as a result.

Competition: CETA includes provisions recognizing that Canada and the EU are free to enforce their respective domestic competition legislation. CETA includes rules for monopolies and state enterprises.

Public procurement: All federal and sub-federal levels of government in Canada and the EU will open their procurement markets. Procurement thresholds for Canada in the EU are the same as domestic procurement directive; Canada gets the same level of access as EU member states give to each other in almost every aspect. In Canada, the EU gets access for high value contracts as with Canada-U.S. agreements (through FTA/NAFTA and similar to the 2010 reciprocity agreement at the state-province level under the WTO General Agreement on Agreement GPA).

There are exceptions for cultural industries, aboriginal businesses, defense, research and development, financial services, services in the fields of recreation, sport and education, Canadian airport authorities and Canada Port Authorities, as well as social and health-care services. Rolling stock retains a 25% Canadian content value. There are also specific regional economic development exclusions for Manitoba, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Prince Edward Island, New Brunswick and Yukon. There is full flexibility to specify environmental and social criteria and to have relevant experience as part of the requirement for the tender, which would tend to favor local operations.

CETA applies only to high-value procurement contracts. Governments can continue to use procurement to support local development, especially small and medium-sized enterprises. The threshold-value for procurement contracts in CETA will range from 130,000 to five million special drawing rights (an international value of the International Monetary Fund for which the corresponding range is $205,000 to $7.8 million for the 2012-2013 biannual cycle). This is comparable with Canada's thresholds in the WTO and well above the value set under Canada's Agreement on Internal Trade, which starts at $25,000.

The EU-Canada Joint Study (2008) estimated that Canada's federal government awarded contracts worth 15 to 19 billion Canadian dollars per year. Procurements by Canadian municipalities in 2011 were estimated at 112 billion Canadian dollars (approx. €82 billion) or almost 7% of Canadian GDP. Canada will also create a single electronic procurement website combining information on all tenders and access to public procurement at all levels of government.

Intellectual Property Rights (IPR): CETA will create more of a level playing field between Canada and the EU through complementary but separate approaches. Specifically: patent term restoration (no more than two years for Canada vs. five for the EU), extended data exclusivity (to eight years in Canada versus ten in the EU), and right of appeal for brand-name drug manufacturers in the CETA (details still to be unveiled). There is a renewed commitment to combatting counterfeit goods.

The agreement strengthens the Canadian IPR system in pharmaceuticals through extended protection. Canada is not a big player in the global pharmaceutical market (with 2.6% market share). About 85% of the drugs consumed in Canada are imports, either from the United States or the European Union. About half of Canadian production is exported, mostly to United States.

Copyright: CETA brings Canada in line with World Intellectual Property Organization Treaties on Copyright, and Performances and Phonograms.

Trademarks and Designs: Canada did not take on any commitments in this area but agreed to make reasonable efforts to comply with the Singapore Treaty on the Law of Trademarks, the Protocol Related to the Madrid Agreement Concerning the International Registration of Marks, and the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs.

Geographical Indications (GIs): CETA extends guaranteed name-protection (e.g. French Cognac and Canadian Whisky) to products with names like Grana Padano, Roquefort, Elia Kalamatas Olives, Aceto balsamico di Modena and Chabichou du Poitou. Prosciutto di Parma and Prosciutto di San Daniele can now use their names in Canada. Enforcement of GIs in the Canadian market remains a private matter to be argued before the courts.

Domestic Regulations: Included for the first time in a Canadian agreement, Canada and the EU will base their domestic licensing and qualification decisions on simple, clear, publicly available, reasonable and impartial criteria.

Telecommunications: CETA gives domestic players in the telecommunications market fair access to networks and services, and ensures that regulators act impartially, objectively and in a transparent manner.

Financial Services: Recognizing the role that banks, insurance companies and other financial institutions play in the economy, CETA includes provisions that safeguard the government's right to take prudential measures to protect the stability and integrity of the financial system. Disputes will be addressed using CETA's special dispute settlement rules for financial services.

Sustainable Development

CETA commits to sustainable investment and trade relations respecting environmental, social and labor rights. The Trade and Sustainable Development chapter will create mechanisms for EU and Canadian civil society involvement in the implementation and monitoring of CETA. A dedicated arbitration mechanism, including government consultations and a panel of experts will be established.

Forums for discussion in areas including forestry, fisheries, aquaculture, biotechnology and raw materials are established, with emphasis on science-based approval processes. CETA includes a commitment to cooperate in international forums dealing with issues relevant for both trade and environmental policies, including the WTO, the Organization for Economic Co-operation and Development, and the United Nations Environment Programme.

Dispute Settlement Mechanism Including Mediation

Negotiators drew on lessons learned from the NAFTA and Canada-U.S. softwood lumber disputes, as well as the investor-state challenges under NAFTA Chapter XI. They were determined to make the process more transparent but to preserve and defend governments' ability to regulate. CETA contains a streamlined horizontal mechanism, that includes a fixed set of procedures and time-frames, and covers most areas of CETA. Should formal consultations fail, there is provision for an arbitration panel of independent legal experts drawing from a roster of specialized experts. CETA includes a more robust voluntary mediation mechanism than has been included in Canada's previous trade agreements. CETA includes exceptions, as do all of Canada's free trade agreements, for measures including environmental protection, cultural industries, taxation, and balance of payments.

Looking Forward

CETA creates a framework for business engagement, such as compatibility and equivalency of regulation.

Implications for Canada

By opening new opportunities, trade agreements have the potential to change attitudes. Trade liberalization is as much about developing new norms of behavior as well as adhering to new rules and regulations. If opportunities are realized, CETA should boost gross domestic product, stimulate the creation of more jobs, reduce costs for taxpayers in Canada, promote two-way investment flows and help Canadian enterprise gain in the European market. Specifically CETA will:

- support and advance the strategic goal, endorsed by the provinces and business, of diversifying Canada's international trade and commercial relations. Over time Canada would be less dependent on the United States.

- expand and promote trade in services between Canada and the EU. These will include engineering, professional, computer and information, and scientific and technical services.
- open-up government procurement markets both in the EU and in Canada. The EU procurement market is worth almost $3 trillion a year.
- encourage greater direct foreign investment between Canada and the EU, and strengthen investor protection.
- better position Canada in the Trans-Pacific Partnership and WTO because it raises the bar in agricultural products, intellectual property, foreign investment, and services.

The EU is collectively the largest marketplace and economy in the world, accounting for about a fifth of global economic output, consumption, and production.

Canada currently has a trade deficit with the EU. It also has a qualitative problem in value-added products. CETA opens the potential for a better balance. Canada's top exports are resources: gold, diamonds, iron ore, uranium, petroleum products, wheat, coal, and solid fuels. Amongst the top ten EU exports are medications, motor vehicles, turbo jets and turbines, aerospace parts, wines, biological preparations, machinery parts, and medical instruments.

CETA will move both Canada and the European Union into closer cooperation in many areas of domestic and international regulation. It eliminates tariffs in fisheries, forestry, automotive products, and aluminum—all sectors that Canada has sought to achieve for years. There will be at least a $1 billion increase in pork and beef exports, and it will open up government procurement on both sides. It contains many innovative elements and improvements over previous practices. It creates a bridge—albeit with different paths, different structures, different approaches to individual chapters—between what the European Union did internally with its 28 countries and what Canada, the United States and Mexico did in terms of the North American market.

CETA opens new doors for business services—insurance, finance, engineering, architecture. The average agriculture tariffs to the EU are currently in the 13% to 14% range. These will gradually come down, opening new markets for Canadian grains and, with increased quota, our meat products. That CETA did not begin the phase-out of supply management for dairy and poultry products in Canada is a missed opportunity that means continuing higher cost for Canadian consumers. It makes Canada a less attractive place for value-added food-processing industrial activity.

Trade and investment are the linchpin of the Harper Government's economic growth policy ie. Global Markets Action Plan. Since its election in 2006 it have signed trade agreements with nine countries—Colombia, Jordan, Panama, Peru, the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland) and Honduras and reached agreements-in-principle with the 28-country European Union and with Korea.

The search for new markets is motivated by the combination of pull and push. The pull comes from rapidly growing market opportunities in the rest of the world, especially Asia. The push comes from the continuing effect of U.S. political actions hampering market access. The Canada-U.S. FTA and NAFTA created preferred access to the United States but it has been hampered by the security imposed by the United States after 9/11. Initiatives designed to create perimeter security thus allowing better border flow in goods and people and regulatory symmetry are underway but progress is slow and even with safeguards there is always the threat of U.S. protectionism.

Recent events have not been encouraging: the long saga surrounding the Keystone XL pipeline presidential permit; country-of-origin labeling requirements that upset century-old trade in meat; failure to fund the Detroit-Windsor customs plaza; the uncertainties created by sequestration and gridlock in Washington.

The gravitational pull of the U.S. market is powerful. The United States will always be number one for Canada, but the experience of the past five years has heightened the importance of diversification, of building markets overseas. Canada needs to have more trading partners with heft, alternative markets to the United States. Canadians also need to work with others to keep pressure on the United States, at every level of their government and their private sector, to make it in their interest to preserve the liberal trading regime that the USA has much to create.

Always a trading nation, Canada since the FTA/NAFTA has become a nation of traders. The Canadian advantage begins with vast land and bountiful resources. Canada possesses an educated multi-cultural population. Half the population of Toronto, the biggest city in Canada and now fourth largest in North America, was born beyond Canadian borders. Half of Canada's inward migration since 1980 has come from Asia. Canada has a good, if incomplete, logistics system (it needs oil and gas pipelines, more rail capacity and supporting infrastructure at its tidewater ports). Globalization for Canada means defining the country's niche through development of "trade in tasks"within complex international production and supply chain networks that service as many different markets as possible. Export-oriented industries, industries involved in international commerce, whether on the trade or investment side, tend to pay their workers more, tend to have higher productivity, tend to be more innovative.

As to next steps: The Chamber of Commerce and other business groups have argued that Canada needs to step up its public advocacy efforts. A senior level delegation of cabinet ministers, parliamentarians, business and civil society (think tanks, NGOs et al) should meet with key players involved in the European ratification process. It will be especially important to meet new members that may be elected in the May EU parliamentary elections.

Canada needs a network of trained, on-the-ground trade commissioners in all the major countries in Europe. A good trade commissioner service is a tactical leverage point to accelerate time to market in these markets. It needs to be extended. Canada also needs to make more strategic use of trade assets that are already in place. For example, the Export Development Corporation is regularly negotiating pull-lending facilities with major multinationals around the world. The intent of the debt facility is to provide dollar-for-dollar access to Canadian markets and Canadian companies. As economist Jock Finlayson argues, now Canada need to drive to the next level to get access for its companies. With incremental effort at follow-through, Canada can see huge economic benefits to its companies doing trade in these marketplaces.There is also work to do in Canada. The business community needs to develop broader strategies to take advantage of the new market opportunities

A competitive Canada in global markets obliges a competitive market inside Canada. Yet, it is often more difficult to do business between provinces than internationally. Efforts to liberalize internal trade were to match the progress made during the Canada-U.S. FTA. There has been some progress, especially between the western provinces, but nationally it is an unfinished chapter. The Trade Commissioner Service needs to work with the provinces and business associations to encourage more small and medium enterprises to look beyond the United States towards markets internationally. Preparation begins with three questions:

- Do they have the management capacity?
- Do they have the access to capital?
- Do they have the knowledge and information needed to do business?

Implications for North America

When NAFTA was negotiated in 1993–94, there was an expectation that the continental trade pact would be the first step to a free trade pact of the Americas. Ronald Reagan said he "dreamed of a common market stretching from the Yukon to the Yucatan." George H.W. Bush foresaw the day when the countries of North, Central and South America would all be "coequal partners in a free trade zone stretching from the port of Anchorage to Tierra del Fuego." Unfortunately, the Free Trade Agreement of the Americas launched by Bill Clinton at the Miami Summit of the Americas in December, 1994 sputtered out.

After negotiation of the NAFTA there was some expectation that Canada, Mexico and the United States would negotiate future trade agreements as a bloc with other nations, notably Chile, and grow NAFTA. But there was little appetite on the part of any of the partners and the leaders' summits, when held, have effectively been dual bilaterals between the United States and Mexico and the United States and Canada. Each partner subsequently embarked on their own bilateral trade agreements. Mexico was especially active; it now has a network of 11 Free Trade Agreements covering 43 countries, including with the EU.

The Trans-Pacific Partnership negotiations provide an opportunity for NAFTA's revival and renewal. The trilateral summit held in Mexico City in February 2014 heralded the return to regular leaders' meetings (Canada will host in 2015) but the kind of coordinated, collaborative renewal-agenda that would take NAFTA to the next level is not yet evident.

CETA is the first agreement that the EU has with a G-7 country. It is likely that the CETA will be the template for the EU negotiating team (essentially the same group that did the CETA) in the TTIP and this should ensure a degree of symmetry in any deal. According to the Canadian Chief Negotiator, as they negotiated the final stages of the agreement, Canada made a number of connections or linkages to a potential outcome between the United States and the EU, so if the United States and the EU reach an agreement, certain things will be triggered in CETA that will provide Canada with greater benefits.

The United States and the EU are going to face significant obstacles—on agriculture and procurement, for example—to complete an agreement, but the Canada-EU CETA illustrates what can be done. North America's integrated supply chains require access to the EU and the completion of an ambitious, comprehensive TTIP agreement will serve continental interests. In the interim, Canada, the United States and Mexico need to consult with a goal of securing a NAFTA-EU agreement. CETA will not discriminate against USA and Mexican investors because of they are protected through NAFTA. In a commentary for the CD Howe Institute, Lawrence Herman writes that the raising of the threshold for investment review under the *Investment Canada Act* from the current enterprise value level of $344 million to $1.5 billion "will apply equally to investors from the US and Mexico as it does to investors from the European Union." According to Herman, "The North American Free Trade Agreement does not expressly restrict application of the Most-Favored Nation rule with respect to investments, so the rule applies. Investors from the United States and Mexico must be treated on an equal footing and receive the same preferences as EU investors or investments under CETA; likewise, our other partners in FTAs, such as Peru, Chile and Columbia."

Implications for TTIP

Neither history nor trade negotiations repeat themselves, but inevitably there will be some rhyme to both CETA and TTIP, beginning with the fact that the EU team that will conduct the negotiations is essentially the same group that concluded the Canada-Europe deal. The mindset on the EU side and their starting approach to the outline of the agreement will reflect the Canadian experience. One of the biggest challenges at the outset was to reconcile the EU Single Market approach with the Canada's (arguably North America's) more market-oriented approach of reconciling business interests within the negotiations. Constitutional division of powers obliged the Canadian negotiators to assure that the Canadian provincial representatives were integrated into the negotiations. Managing the U.S. states will not be the same challenge for U.S. negotiators. Canada will be watching TTIP negotiations closely, as CETA is designed to include special "hooks" that will allow the two transatlantic deals to be linked, particularly regarding issues such as standards and rules of origin.

Some specific areas of interest to U.S. TTIP negotiators will include:

- Investor-state provisions have been controversial, especially since being included in the NAFTA agreement, when it was originally intended to give Canadian and U.S. investors greater comfort to invest in Mexico. Instead, such provisions have been applied more often against Canada, at some cost. *The Globe and Mail's* Barrie McKenna reflected popular perception when he wrote that "companies are cleverly stretching the bounds of what they consider an investment" and that "Chapter 11 has become a way for companies either to bypass domestic courts and regulatory agencies, or to get restitution denied through normal channels." Yet the reality, as the Canadian Council of Chief Executive's Vice President, Ailish Campbell, blogged is that "while lawyers may be stretching the boundaries of their attempted applications of NAFTA Chapter

11, the outcomes tell a different story." Judgments have been narrow in scope and Chapter 11 does not limit the government's right to regulate in the public interest. Given the Canadian experience the final agreement is likely to be explicit about the primacy of government. In CETA, negotiators decided to strike a balance, by attempting to provide more protection for governments' right to regulate while simultaneously creating a positive environment for investment.

- *Public procurement*. Thirteen U.S. states have exempted themselves from international agreements, notably the WTO Government Procurement Agreement. Canadian provinces had taken a similar approach, exempting their procurement from the NAFTA, but found with the passage of the U.S. stimulus package that their companies were excluded from bidding. This led to the negotiation (February, 2010) of a reciprocal state-province procurement agreement (albeit with notable exemptions). This issue should not hamper U.S. negotiators given that Canadian provinces obtained wide exemptions from EU procurement.
- *Exemptions*. The U.S. Commerce clause will give USTR negotiators much wider scope for negotiation than their Canadian federal counterparts, who are more constitutionally constrained because of powers explicitly reserved to the provinces. Nonetheless, they must deal with Congress. This should result in a reasonably clear sense of what is not on the table. Assuming the USA and EU take the "negative list" approach it should make it easier to discipline the exemptions. Nonetheless, negotiators should anticipate efforts to discredit the "negative list" approach because of its so-called ratcheting effect, leading to a race to the bottom. There is no evidence to support this and, in the case of investment liberalization, an OECD study observes that NAFTA-inspired agreements, of which the CETA is arguably derivative, "tend to have an advantage in terms of the number of sectors covered by non-discrimination disciplines and the degree of transparency and predictability through a "one-shot" liberalisation encompassing all sectors and a "ratchet" mechanism that locks in future reforms."

- *Agriculture*. This is probably one of the least ambitious chapters, given the preservation of supply management in Canada. This chapter came down to hard negotiations between Canadian negotiators who wanted better access for pork and beef products and the EU wanted better access for dairy products, especially for its cheese.
- *Standards*. The EU is conducting its own consultations on ambition for scope of regulatory provisions. Medical devices, construction products, and consumer products are some of Canada's priorities for common standards. This will need to be an on-going discussion to make it work, and it is something that should eventually embrace North America (including Mexico) and the EU.
- *Rules of Origin*. Canada has a high degree of U.S. inputs into what it produces and ships. CETA includes provision for certification to EU standards in Canada. The EU and the United States may go further than CETA on regulatory standards in TTIP, and this would be a good thing. If we can do this across the board we can assess North American, not just Canadian, content. We need to avoid the spaghetti bowl of growing and differing rules of origin.
- *Energy*. Canada wanted access to the EU market, and the EU is keen to find alternatives to the Middle East and Russia as its own supplies draw down (mindful that the fracking revolution when embraced by Europeans could change this). The challenge for Canada is to build a pipeline to tidewater with accompanying LNG terminals before the U.S. revolution turns it into an energy exporter. Recent events in the Ukraine, notably the Crimean gobble by the Russians, have made a new case for European strategic alternative gas supplies to Russia and Gazprom.

CETA's Lessons

1. The Road to Europe Starts with its National Leaders

In the months leading to the formal decision by the EU to commence free trade negotiations with Canada, Canadian political leadership worked their counterparts in the lead member states. These included discussions between Prime Minister Harper and Nicolas Sarkozy, Angela Merkel and David Cameron. While Canadian governments have sought closer relations with the EU for fifty years, the impetus for the CETA began in 2006 with conversations between Quebec Premier Jean Charest, EU Trade Commissioner Peter Mandelson and French President Nicolas Sarkozy. The Canada-Europe Roundtable led by former Canadian trade minister Roy McLaren provided ongoing encouragement and support. Sarkozy, arguably the most pro-North American French leader since World War II, saw this as the logical first step to a larger agreement between the EU and the United States.

France's interests in Canada were once focused on Quebec; cultural ties with its former colony that were notoriously re-kindled by Charles de Gaulle in 1967 with his "Vive le Quebec libre" speech. Relations with the Canadian government improved under Presidents Mitterrand and Chirac and flourished under President Sarkozy. French investment and trade with the rest of Canada (oil and gas through Total in Alberta and uranium through Arriva in Saskatchewan) are now greater than that with Quebec. Dutch, British, German and other European investment has also increased—after the United States and Switzerland, Canada was the main destination point before it was overtaken by Brazil - and European business support became another argument in favor of a closer relationship.

2. The Place to Close a Deal is in Brussels

During the end game, frustrated by the opaque and complicated structure of EU decision-making, Canadian leadership sought to close to close the deal by working through their counterparts in the UK, Germany and France. Ultimately, Prime Minister Harper engaged his counterparts—David Cameron, Angela Merkel and Francois Hollande—both bilaterally and in multilateral forums (G8 and G20). The European leaders individually and collectively advised him to go through the appropriate EU officials—European Commission President José Manuel Barroso and Trade Commissioner Karel de Gucht. The October 2013 announcement spurred negotiators to get the deal done.

3. National Governments Can Lead but Contemporary Trade Deals Require Formal Participation from Sub-National Governments

At the outset the Europeans studied the Canadian constitution and realized that to make the gains they wanted in procurement, services and investment (especially around resources) provincial governments had to be at the table and they must be able to commit municipal governments. As a result of this requirement, Europeans would joke that when the Canadian delegation (initially 120 including provincial representatives) travelled to Brussels they would take an Airbus while the EU delegation could travel in a Bombardier Challenger.

4. Public Eeducation is Necessary on "Why Trade?"

The public is skeptical about trade. Deference to what is widely perceived as closed negotiations by the elite has given way to defiance and populist opposition to new trade deals. This despite the fact that globalization, stimulated by freer trade, has lifted millions from poverty and the percentage of people in the world living on $1 a day has declined by 80% percent since 1970s.

Canada is an outlier in that most Canadians think trade deals work to their advantage, although they, like publics in the United States and EU, increasingly expect attention to social license, environmental and labor issues.

Opposition in Canada came from the Left, labor and environmentalists, with the Council of Canadians leading a campaign on the slogan "Trade with Europe but not at any cost." They focused their opposition around the following:

- drug prices would rise significantly;
- investor-state rights would lead to privatization of Canadian water supplies leading to mass water exports; dairy and cheese producers complained about destruction of their industry;
- municipalities would have to open their procurement to the detriment of "local" contractors.

While the critics found space on editorial pages and succeeded in convincing some city councils and school boards to pass anti-CETA resolutions, the opposition did not find sufficient traction to halt the negotiations.

Political leadership must make the case for trade by identifying these jobs—by factory and company, by county and district, by state. In the case of trade, all politics is truly local. The case for trade has not changed since Adam Smith—trade creates growth and prosperity.

5. Create Structures for Trade Advice

Given its politics and high public visibility, the Canada-U.S. Free Trade Agreement necessitated the creation of a mechanism for provincial, business, labor and civil society input. During the Canada-U.S. Free Trade negotiations the Canadian Government created an International Trade Advisory Committee (ITAC) that involved high-level representation from business with a series of Sectoral Advisory groups (SAGIT) including representation from labor and civil society.

This structure served successive governments through subsequent trade negotiations (NAFTA, GATT/WTO, bilateral agreements) as valuable sources of advice and a sounding board. It developed champions, non-government counterweights to the anti-trade interest groups claiming the process was anti-democratic. No similar body existed during the CETA negotiations, nor was there much effort at an ongoing public information campaign.

To sustain public support and ensure that the agreements have relevance to those who will use them, governments need to actively solicit business engagement. The chief negotiators and lead cabinet ministers need to regularly provide updates and share information.

6. Business Must Be Present and Help Drive the Process

The Canadian business community wanted this deal and their pressure helped keep the political level focused. When it appeared the negotiations might wither away, both individual companies and the various business organizations, both sectoral and aggregate (including the Canadian Council of Chief Executives, Canadian Chamber of Commerce, Canadian Manufacturers and Exporter, Canadian Federation of Independent Business) coalesced to underline their concern both publicly and in private conversations.

7. *Start with a Negative List*

Negotiators agreed to liberalize everything except those sectors specifically exempted. Instead of putting on the table that which both sides were willing to liberalize they had to identify that which is excluded. This obliges special interests to justify their exemption or exclusion.

8. *Keep Other Baggage on a Separate Track*

As with any bilateral relationship there are irritants—trade and political—that aggravate and frustrate relations. At the outset, negotiators agreed to keep these issues—for example, the EU fuel quality directive that threatens the export of oil sands product—on a separate track. Otherwise, these issues will interfere and upset the negotiating process.

9. *Patience*

Trade negotiations take more time than anticipated. Much of that time, especially in negotiations between federations, is spent in developing internal cohesion and agreement on a consolidated series of "asks."

Differences between the various EU secretariats were mirrored by differences between Canadian officials and inter-governmental divisions at the federal as well as provincial levels of government. This complicated the negotiations throughout.

Negotiators spent the first year and a half of the nearly four years explaining the differences between the two sides (and to themselves, given the differences between provincial governments). As Pierre-Marc Johnson, the former Quebec premier and advisor to the Quebec Government observed, "It needed lots of exchange so that on both sides the leads and those under the leads at the different tables understood pretty well the policy making principles behind the words we were using."

10. Sell the Deal Regionally and by Industry Sector

When the deal was announced it received the endorsement in principle of most editorialists and pundits, as well as every provincial premier, and all three of the territorial leaders. This effectively ensured that the agreement was seen as a positive development and reflected as such in the media cycle in the first 24–48 hours after the announcement. The Government conducted a cross-country “selling” effort involving regional ministers making the case for CETA in their region and city and identifying the potential job and investment gains by sector. Four in five Canadians backed the agreement, according to a poll taken in the wake of the deal.

11. Follow-Up is Everything

An agreement opens the door but it is then up to business to make use of the new access. Agreements give opportunity but then business must act to invest and trade.

This approach worked well with the Canada-U.S. FTA and NAFTA, both in terms of outward investment and trade. CETA gives Canada a “first-in” advantage—perhaps 10–15% over the United States in the estimate of Canadian Chief Negotiator Steve Verheul. This can affect investor decisions, especially for value-chain processing within North America and in forming customer relationships.

Government can expedite and facilitate opportunities and put in place framework policies, trade agreements, market access arrangements, and support infrastructure like the trade commissioner service. This is especially important in in a country where most companies are under 100 employees.

Ultimately it is up to companies and entrepreneurs to take advantage of opportunities. Having industry sector associations actively beating the drum and organizing trade missions helps. The Canadian Agri-Food Trade Alliance, for example, expects to expand exports to the EU by $1.5 billion a year (which would be a 63% increase). In parliamentary testimony, the Fisheries Council of Canada called it a “game-changer” for Atlantic Canada’s shrimp sector, particularly cooked and peeled shrimp; lobster processing; herring and mackerel sector and a positive impact on the British Columbia groundfish and salmon sectors, and the Northwest Territories and prairie walleye and pickerel sectors.