So what's in the Canada-EU Trade Agreement (CETA)?

Key Elements

The most obvious benefit is a reduction of tariffs (i.e. import taxes) for traded goods. Once CETA is ratified, import duties on 98% of all EU product lines will be eliminated, with an additional 1% subject to phase-outs of up to 7 years. This includes all advanced manufacturing goods, such as machinery & equipment, electrical equipment and medical devices. The majority of agricultural tariffs—including those applying to fruits & vegetables and oil seeds—will also drop to zero upon entry into force. On the other hand, duty reductions on passenger vehicles, grain and certain fish products will take place over a longer period, as will increased quotas for Canadian beef and pork. Once the deal is fully implemented, duty-free access will apply to all industrial goods and 95% of agricultural products.

To take advantage of tariff reductions, CETA has relatively liberal rules of origin, recognizing that Canada is highly integrated with American supply chains. There are special exceptions allowing higher levels of foreign value-added for Canadian automobiles and processed fish, for instance.

CETA also addresses regulatory barriers that affect the goods of Canadian exporters. Under the regulatory cooperation component of the agreement, the two parties will establish a high-level dialogue on regulatory matters to identify discrepancies and opportunities for improved coordination. Another joint committee will ensure that sanitary & phytosanitary measures to protect human, animal and plant life do not unnecessarily harm trade. This body will determine which certifications and standards should be deemed as equivalent. There is also a commitment from the EU to enhance bilateral cooperation and information exchanges on issues related to biotechnology, forestry, raw materials, wines & spirits and science, technology and innovation.

CETA will significantly liberalize bilateral trade in services—which are characterized by their reliance on investment, migration, telecommunications or media as a delivery channel. Both countries have agreed on a “negative list” approach with minimal sector exceptions. Any future liberalization in this field by the EU—either unilaterally or through another trade agreement—will be locked-in and made available to Canadian service providers. CETA establishes a framework to facilitate temporary travel and relocation for business persons, including visitors, intra-company transferees and professionals. It also creates a platform that allows and encourages professional regulatory bodies and associations to sign mutual recognition agreements, allowing engineers, architects and other professionals to work across both countries.

On investment protection, CETA establishes both non-discriminatory and minimum standards of treatment for foreign investors, as well as recourse to an investor-state dispute settlement mechanism. This mechanism allows investors to bring governments to international arbitration
when their rights under the agreement have been violated. That said, recourse to the mechanism will be more restricted for financial services investors (see below). The threshold for review of takeovers of Canadian companies by a European investors under the Investment Canada Act has also been raised to $1.5 billion (compared to $1 billion).

CETA also improves Canada’s investment climate by enhancing the protection of intellectual property rights. While copyright protection remains largely unchanged from the Copyright Modernization Act, the pharmaceutical patent regime has been strengthened. This includes up to two years of patent-term restoration to compensate for lost marketing opportunities in cases of delayed regulatory approvals. CETA also contains a commitment from Canada to reevaluate rules surrounding the right of appeal in order to make it more efficient and predictable. Under the agreement, the European Union will have wider recognition in Canada of its geographical indications, particularly for meats and cheeses. However, most existing trademarks in Canada will remain protected.

One of the most innovative features of CETA is its opening up of government procurement markets to bidders from each country. For the first time ever, provisions apply not only to the federal governments, but also to provincial and municipal procurement. That said, there are minimum thresholds for contract value and certain sectors in certain regions have been excluded (see below).

**Outcomes on contentious issues**

As negotiations drew to a close, the press highlighted a narrow set of issues as potential sticking points: beef, pork, dairy, fish, government procurement, pharmaceutical patents, financial services and automotive rules of origin. Details of the concessions provided by the EU and Canada in these areas are now much clearer.

Under CETA, Canadian beef exporters will receive a tariff-quota of 50,000 tons, whereas pork exporters received 80,000 tons. These levels are deemed sufficient to justify the investments needed to create a separate supply chain (the EU market will not accept hormone-enhanced products, which are common to the Canadian meat industry). These tariff-quotas will be phased in over 3-7 years.

Canada’s supply management system remains intact. Chicken and eggs are carved out of the agreement entirely. However, the EU will be given additional tariff-quotas for milk concentrates and cheese. For cheese, this amounts to a doubling of the current tariff-quota to 30,000 tons, which still represents only 4.2% of the domestic market. In return, Canada has secured access to the entire European dairy market. The Canadian government does not expect EU cheese imports to harm Canadian producers, but announced the possibility of compensation if that were to be the case.

Canada has agreed to phase out local fish processing requirements over a period of 3 years (exclusive to Newfoundland & Labrador). This allows Canadian fisheries to sell fish catches directly to the European market and was likely quid pro quo for the eventual elimination of EU tariffs in this area.
The final provisions on government procurement cover all levels of government, however a number of exceptions are outlined in an annex that is not yet publicly available. Known exceptions include 25% local content requirements for mass transit in Ontario and Quebec, as well as for purchases by certain public utilities and crown corporations. Minimum thresholds before competitive bidding is required vary from $200,000 to $7 million, depending on the purchasing entity and type of product.

The outcome for pharmaceutical patents was mixed. On one hand, Canada gave commitments on patent term restoration and the right of appeal. On the other, the data protection regime was left untouched. Generic manufacturers will also be provided with an export exception, allowing them to produce patent-protected drugs in Canada as long as they are exported to third countries. To counter concerns that some of these provisions will increase drug prices, the government has indicated a willingness to offer compensation to the provinces.

CETA reaffirms the legitimacy of prudential regulations to preserve financial stability. As such, financial services investors wishing to raise an investor-state dispute must first take their claim to a joint expert committee convened by both governments. If the committee deems the offending measure to have been of a ‘prudential’ nature, the investor would not have recourse to international arbitration. This is the approach taken in NAFTA.

Given the integrated nature of Canada’s automotive supply chain, having rules of origin that accommodate significant levels of foreign value-added is essential. In general, CETA will allow Canadian passenger vehicles that meet a minimum of 50% domestic content to qualify for duty-free status. This will move up to 55% after 7 years. However, since this would exclude a significant volume under current production arrangements, Canada will also be able to ship up to 100,000 units with only 20% domestic content.

Next steps

Although the tough issues have been resolved, there are still a number of steps until the agreement comes into force. The text needs to be finalized through technical and legal review and translated into multiple European languages. Although Canadian provinces have given their tentative support for the deal as it stands, they will be consulted once again during this process.

Once the text is final, the agreement will be submitted for ratification, which is expected to take 18-24 months. In Canada, this means submitting the agreement to parliament. In Europe, ratification requires the support of a qualified majority of EU member states, as well as an affirmative vote from the European Parliament. Finally, provinces and member states will likely need to adjust their current laws and regulations before the agreement can go into effect.