Canada and European Union Release Text of Comprehensive Economic and Trade Agreement

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On September 26, 2014, Canada and the European Union (EU) released the draft legal text of the Comprehensive Economic and Trade Agreement (CETA), available here. This follows an agreement in principle reached on October 13, 2013, and the announcement of the draft legal text on August 5, 2014. The target implementation date of the CETA is sometime in 2016. Businesses in industries affected by the CETA should start planning now. The CETA will undoubtedly bring new competition from Europe in industries previously protected by Canadian tariffs, while also opening up the vast EU market to Canadian businesses previously affected by European tariffs.

The CETA is more than a bilateral trade agreement (BIT), as it includes matters such as labour and mobility, government procurement and intellectual property. Once implemented, the CETA is expected to initially increase bilateral trade by 20% and boost Canada's economy by $12 billion annually.

Here is a summary of the key terms of the legal text of the CETA:

1. **Tariff Elimination or Reduction:** The draft legal text proposes eliminating 98% of all tariff lines, including 100% of non-agricultural tariff lines and close to 94% of agricultural tariff lines, with the vast majority coming into effect immediately on the implementation of the CETA. Notable exceptions to tariff elimination include the poultry and egg sectors, while other agricultural products will only see reductions in tariffs: dairy, pork and beef, for example. Services qualified as fundamental to our social fabric are also excluded, for example health care and public education.

2. **Made in Canada Requirements:** The CETA provides clear rules of origin to determine which goods are considered “made in Canada” and thus eligible for preferential tariff treatment. The CETA also contains provisions to streamline exporting procedures and reduce red tape at borders by simplifying and automating border procedures and by providing an impartial and transparent system for addressing complaints about customs rulings and decisions.

3. **Streamlining Regulatory Requirements:** The CETA proposes to streamline regulatory requirements through mutual recognition of technical regulations in each respective market and by accepting test results on products from each respective certification body. Parties from each market would also be able to participate in the development of technical regulations.

4. **Trade Remedies and Investor Disputes:** The CETA reflects WTO rules on unfair pricing and unfair government subsidies requiring a country to undertake a fair and transparent investigation to determine whether unfair trade is taking place before a party imposes a trade remedy. The CETA includes a contentious dispute resolution mechanism between investors and a state. The “investor-to-state dispute settlement” (ISDS) would involve an independent arbitration panel hearing facts and opining on the merits of an investor’s claim. The contention is that the ISDS would affect the sovereignty of a state to legislate on specific foreign investment issues, such as labour and environmental laws, that could be challenged by foreign investors operating in that state.

5. **Government Procurement:** One big gain for Canadian businesses is the access to opportunities in the large EU government high-value procurement market, with threshold limits revised biannually. Important excluded industries include culture, aboriginal affairs and defence, as well as programs that support local development for small and medium-sized enterprises.

6. **Intellectual Property:** CETA echoes the recent *Copyright Modernization Act*, which supports advances in technology and international standards, aligning Canada with the World Intellectual Property Organization Internet Treaties. Geographical indications provide exclusive rights for a product based on its geographical origin in cases where origin is considered to confer a particular quality or character to the product, such as *terroir* products or geographical indications for wines and spirits in Europe.

7. **Sustainable Development, Labour and Environment:** The CETA also emphasizes the promotion of economic, social and environmental objectives. It ensures that national laws and policies protect fundamental principles and rights at work, including the right to freedom of association and collective bargaining, the abolition of child labour, the elimination of forced or compulsory labour, and protection against discrimination. The CETA also includes environmental provisions and aims to enforce strict environmental laws and compliance with environmental standards.

Next Steps

The draft text of the CETA is under legal review by the EU and Canada. In order to meet its target implementation date of 2016, CETA will need to be ratified by the EU Council, the European Parliament, the 28 member states of the European Union, and the federal and provincial governments in Canada, all before the end of 2015. All told, the proposed CETA offers many opportunities for export driven Canadian businesses in industries previously subjected to European tariffs. However, businesses on both sides of the Atlantic mostly reliant on their internal markets should prepare well in advance of 2016 for new competitors from abroad.