

# **Five Years Into the Canada-European Union Comprehensive Economic and Trade Agreement: What to Make of the EU's First Third-Generation Trade Agreement?**

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## *Executive Summary*

The Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU) has been in force for over five years. Thus, it offers an opportunity to assess its performance. The CETA is a third-generation trade agreement, characterised by an extensive institutional framework for cooperation between the parties to make it a “living” trade agreement. Since its entry into force in September 2017, trade in goods and services between Canada and the EU has experienced significant growth. This positive outcome can be attributed primarily to tariff reduction and elimination contained in the agreement. The impact of second- and third-generation trade issues has likely been less pronounced so far because such issues require more time to address. Their impact is also harder to measure. This report provides an overview of the CETA's background and negotiation process. It outlines the agreement's main features and highlights the economic results it has generated for Canada and the EU. Additionally, the report assesses the effectiveness of the CETA's institutional framework in managing the agreement once in force.

## Introduction

The Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU), which entered into force provisionally in September 2017,<sup>1</sup> was hailed at the time of its negotiation as a “landmark” agreement and “the best, the most ambitious and the most progressive form of trade agreement” (Dendrinou and Verlaine 2016; Fahey 2017: 293). For their part, Allee et al. (2017) found that the CETA was a novel trade agreement, with only seven percent of its language copied from 49 previous agreements that the authors analysed. It was also seen, at the time, as a “forerunner” or “template” for the Transatlantic Trade and Investment Partnership (TTIP) agreement between the EU and the United States before it was abandoned by the Trump administration (Fahey, 2017). The CETA also served as a model for the Trade and Cooperation Agreement between the EU and the United Kingdom following the latter’s “Brexit” (Neuwahl, 2021).

The CETA is considered a “deep” trade agreement, which Mattoo et al. (2020) define as “reciprocal agreements between countries that cover not just trade but additional policy areas, such as international flows of investment and labour, and the protection of intellectual property rights and the environment, among others”(3).<sup>2</sup> The CETA can be considered the deepest of deep trade agreements; it is a third-generation trade agreement (Deblock et al. 2016). This is because it also includes an extensive institutional framework to facilitate cooperation between the parties as the latter address standards, rules and regulations that represent obstacles to trade for firms.<sup>3</sup> This cooperation occurs after the agreement has entered into force, which is why such trade agreements are often referred to as “living” agreements.

Now that the CETA has been in force for over five years, it provides us with enough time to make an initial assessment of the agreement’s performance. During this period, trade in goods and services between Canada and the EU has grown more rapidly than before. This positive outcome appears to be mainly the result of tariff reduction/elimination (i.e., first-generation trade provisions), less so because of provisions pertaining to third-generation trade issues, which take longer to address and resolve as well as measure.

This report begins by providing the background to the CETA’s negotiations. It then describes the CETA’s main features, and the economic results it has helped generate for Canada and the EU

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<sup>1</sup> As a “mixed” or “shared” competence trade agreement, the CETA must be ratified not only by the European Parliament but also by the national (and sometimes regional) parliaments of all 27 EU member states. Until this process is completed, the CETA is in force provisionally with some provisions pertaining to mixed competencies being suspended temporarily.

<sup>2</sup> The literature often uses the terms free trade agreements (FTAs) and preferential trade agreements (PTAs) interchangeably; however, as Rodrik (2018) argues, deep trade agreements (DTAs) are not as free or even preferential as first- and second-generation trade agreements, because they deal increasingly with standards, rules and regulations rather than traditional market access issues such as tariffs and quotas. Third-generation policy issues can open up cross-border economic exchanges as well as restrict them. Consequently, we use the term “trade agreements” herein to refer to FTAs, PTAs, DTAs, customs unions, and economic partnership agreements.

<sup>3</sup> For a discussion of first-, second- and third-generation trade agreements, see Leblond and Viju-Miljusevic (2022).

since it came into force. Finally, it offers an assessment of the CETA's institutional framework to manage the agreement once it is in force.

## **Background to the CETA Negotiations**

Canadian trade policy has traditionally been built around two core building blocks. The first is the liberalisation of international trade through the negotiation of multilateral agreements under the GATT/WTO. The second is the importance of the trade relationship with the United States. In addition to these two core blocks, there is a third dimension that has ebbed and flowed in importance over time: reducing Canada's economic dependence on the United States. In the 1970s, this third dimension was known as the "third option"; it did not last very long (about ten years) and did not produce the desired effects. Indeed, during the third-option decade, trade with the US continued to increase (Hart 2002).

As part its third-option trade strategy, Canada became the first country with which the EU (then the European Community) signed a partnership agreement in 1976. The Framework Agreement for Commercial and Economic Cooperation (1976) established a structure for the management and development of relations in several areas, including trade. However, the agreement's effectiveness was limited because form took precedence over content (Hart 2002: 291).

Two decades later, a Canada-EU Action Plan (1996) was concluded. This plan set out an agenda for joint action in the areas of economic and trade relations. In 1998, an implementation plan was established to reduce barriers to trade. The plan covered the following elements:

- Customs inspections and authorisations;
- Regulation (e.g., mutual recognition of health and technical standards)
- Competition;
- E-commerce;
- Services (e.g., recognition of professional qualifications);
- Intellectual property (e.g., respect of geographical designations for wines and spirits);
- Cultural and scientific collaboration;
- Public procurement (e.g., non-discrimination against European companies).

But again, the results fell short of initial expectations, even though several cooperation agreements were concluded in the years that followed the Action Plan.<sup>4</sup>

A couple of years earlier, the Canadian federal government had proposed the creation of a transatlantic free trade area between North America and Europe (Wolfe 1996). Seeing little interest for such an agreement from the EU and the US, the Canadian government began

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<sup>4</sup> Agreement on Cooperation and Mutual Assistance in Customs Matters (1997), Agreement on Mutual Recognition of Conformity Assessment (1998), Veterinary Agreement (1999), Agreement on Competition (1999), Agreement on Trade in Wine and Spirits (2003).

negotiations for a free trade agreement with the four member-states of the European Free Trade Association (EFTA) in October 1998. For Canada, such an agreement was an important step in deepening economic ties with Europe. It was not until June 2007, however, that the agreement with the EFTA countries was concluded, following the resumption of negotiations in 2006 after a five-year hiatus due to disagreement on the terms of access to the Canadian market for European (mostly Norwegian) shipbuilders.

The lack of progress of multilateral negotiations under the WTO's Doha Agenda, the proliferation of bilateral or regional trade agreements, and a plateauing of trade flows under NAFTA prompted the Canadian government to rethink its trade strategy based on multilateralism (Bélanger 2005; Deblock 2008). It shifted its focus to bilateral and regional trade agreements, while remaining involved in any negotiations on the Doha Agenda. This is why it resumed negotiations with the EFTA countries and decided to deepen relations with the EU in the mid-2000s.

To reinvigorate economic cooperation between Canada and the EU, negotiations on a Trade and Investment Enhancement Agreement (TIEA) began in the fall of 2005. The TIEA's purpose was "to go beyond traditional market access issues by promoting mutual recognition of national standards, professional qualifications and assessment procedures" (Government of Canada 2005: 18). Such an agreement was thus intended to complement the Doha Agenda's multilateral approach. Overall, the TIEA incorporated several of the elements contained in the 1998 Canada-EU Implementation Plan. In May 2006, the TIEA negotiations were suspended by mutual agreement until the uncertainty surrounding the Doha Agenda negotiations had diminished.

Like Canada, the EU also had to rethink its trade strategy because of the slow pace of multilateral negotiations under the Doha Agenda and the proliferation of bilateral and regional trade agreements. It was in the wake of this new European strategy that then German Chancellor Angela Merkel announced in January 2007, when Germany took control of the EU's presidency for six months, that she intended to strengthen economic cooperation between Europe and the United States as part of her mandate, with the aim of eventually establishing a transatlantic free trade area (Benoit and Peel 2007).

For Canada, it was crucial to ensure that any agreement to liberalise transatlantic trade was not limited to the US. Shortly after his arrival, the then EU ambassador to Canada reinforced this idea of an economic rapprochement between the EU and North America (not just the US): "I would hope that Canada is also looking [and asking] 'what is our long-term relationship with the EU?' Should they want an FTA [Free Trade Agreement] with the EU, I think certainly now is the time to start talking" (Adeba 2006). It is in this context that the idea of a trade agreement between Canada and the EU became topical again.

It was when former Quebec premier, Jean Charest, made a strong pitch for a Canada-EU economic partnership at the World Economic Forum in Davos in January 2007 that the CETA ball was really set in motion. At their annual summit in Berlin on June 4, 2007, Canada and the EU agreed to cooperate on a joint study that would assess the costs and benefits of a closer

economic partnership between them. At the following year's Canada-EU Summit, held in Quebec City in October 2008, the joint study indicated that an economic partnership agreement would generate significant economic gains for both sides, especially if they could find common ground to eliminate most of the non-tariff barriers that hinder their economic relationship (Government of Canada and European Commission 2008). It concluded that such an agreement would allow Canada to increase its exports of goods and services to the EU by €8.5 billion (C\$12.5 billion) while, in return, the EU would be able to increase its exports to Canada by €17 billion (C\$25 billion). The study also suggested that GDP would increase by €11.6 billion (C\$17.1 billion) and €8.2 billion (C\$12.1 billion), respectively, for the EU and Canada. While these amounts are not negligible in absolute terms, they accounted for only 0.08 per cent and 0.77 per cent of European and Canadian GDP, respectively.

The anticipated economic gains were, therefore, small relative to the size of the European and Canadian economies. This was in part because Canadian goods faced an average tariff of 2.2 per cent when they entered the EU in 2007, whereas European goods were hit with an average tariff of 3.5 per cent when they entered the Canadian market. If average custom duties between Canada and the EU were already low, then the benefits arising from further reduction or elimination of tariffs because of an economic partnership agreement would only have marginal effects on both economies. According to the joint study, a quarter to a third of the benefits arising from a partnership agreement would come from getting rid of tariffs. The joint study also indicated that any agreement between Canada and the EU would need to solve internal trade barriers within Canada so that Europeans would be faced with a single market in Canada, as they were in the EU.<sup>5</sup> Finally, it outlined several fields where Canada and the EU would benefit from collaborating more than they do at present: science and technology, energy, the environment, transport, customs and education. Greater collaboration in these fields would help to improve the exchange of ideas and best practices with the ultimate goal of getting more people and companies on both sides of the Atlantic to do deals with each other.

At the Quebec City summit in October 2008, following the approval of the joint study's conclusions, an agreement was reached to undertake a scoping exercise for possible negotiations of an economic partnership agreement between Canada and the EU. The results of this scoping exercise were published in March 2009 and an agreement to start the negotiations was finalised at the Canada-EU summit held in Prague in May 2009. The elimination of tariffs on traded goods remained a key negotiation issue. Both sides made it clear that no tariff lines were excluded from the negotiations *a priori*, even on agricultural goods. Barriers to trade in services were also high on the negotiating agenda. Again, the scoping exercise ensured that no sector would be excluded *a priori*. The objective was to improve market access and eliminate discrimination in favour of national service providers. The overall intention was to build on the two partners' existing WTO commitments and bilateral agreements. In addition, the CETA

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<sup>5</sup> For instance, Canadian provinces have different regulations that necessitate varying requirements for recognizing professional qualifications, licences to practice and accreditations. These divergent regulations represent a barrier to the mobility of labour and have a negative impact on trade in services. Limited progress has been made on removing inter-provincial barriers to trade since then, in spite of Canadian provincial governments agreeing to Canadian Free Trade Agreement in 2017 (see Canadian Federation of Independent Business 2023).

negotiations were expected to address the following topics: dispute-settlement mechanism, competition policy, movement of persons, labour and the environment.

A notable aspect of the negotiations is that the EU requested the Canadian provinces and territories to be an integral part of the negotiations. It meant that provincial and territorial representatives were sitting in the negotiating rooms discussing the issues that fell within their (sole or shared) jurisdictions (e.g., agriculture, energy, the environment, health, labour, natural resources, government procurement). The reason for this unusual request, given that only the Canadian federal government is constitutionally entitled to negotiate and sign international trade agreements, was that the Europeans feared that it would have been easy for the provinces and territories to say that they were not obliged to respect the agreement's contents if they had not actively participated in the negotiations. The EU did not want to devote time and effort to negotiating the CETA with Canada only to find out later that many of the agreed-upon provisions are not being applied or implemented by some or all of the provinces.

A major negotiation issue that involved Canadian provinces and territories was public procurement. Accessing provincial and municipal government procurement markets in Canada was one of the EU's major goals in negotiating the CETA. At the time, European firms saw themselves as being handicapped when provincial, territorial and municipal governments launched invitations to tender for the supply of goods and services. Although the WTO's plurilateral Agreement on Government Procurement required that its members treat foreign firms on an equal footing with their own national firms when making deals with the government, these rules only applied to the federal government in Canada's case; they excluded provincial, territorial or municipal governments.<sup>6</sup> The EU side made it clear that Canada would have to give up this exclusion if the negotiations for an economic partnership agreement were to have any chance of succeeding.

The EU was also asking Canada to strengthen its protection of intellectual property rights, particularly by extending Canadian drug patent terms by up to two years and recognising EU geographical indications (GIs). The patent term extension for pharmaceutical drugs requested by the EU during the CETA negotiations was to compensate brand-name manufacturers, many of them European, for time lost between the filing for patent protection in Canada and market authorisation by Health Canada (Sinclair et al. 2014). In the case of GIs, the EU wanted to ensure that EU-designated GIs like "Prosciutto di Parma" or "Brie de Meaux", for example, would also be protected in Canada, meaning that they could not be used by any producer other than those officially recognized by the EU (Bawad and Cadogan 2017).

For its part, Canada was asking the EU to guarantee greater access for Canadian beef on the European market, particularly in view of the significant costs that Canadian producers must incur in order to meet European health standards. This request was strongly supported by beef

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<sup>6</sup> The agreement was revised in 2012. The revised version now covers Canadian provinces and territories (and municipalities, which are under provincial and territorial jurisdiction), with some exceptions that differ in part from those included in the CETA.

producers, which are mainly located in Western Canada. In exchange, the EU wanted to see a significant increase in the quotas allowing dairy products, particularly cheese, to be imported into Canada duty-free. This European demand was opposed by the provinces of Quebec and Ontario, where most of the country's dairy production is located.

## The CETA's Content<sup>7</sup>

When it was finally signed on October 30, 2016, after Belgium's internal politics almost scuppered the deal, the CETA was generally seen to be good for businesses in Canada and Europe. With the removal of tariffs on virtually all goods traded except for some protected agricultural products, firms were to have easier access to Canadian and European markets. The agreement eliminated custom duties on all non-agricultural goods over a seven-year period, with 98 per cent of tariff lines brought to 0 per cent immediately when the CETA came into force.<sup>8</sup> In the case of agricultural goods, approximately 95 per cent of them were to be traded duty-free, with some goods benefiting from a transition period of up to seven years.

For their part, EU tariffs on beef and pork imports from Canada remained in place; however, the EU agreed to a significant increase in quotas for such imports free of custom duties (so-called tariff-rate quotas [TRQs]). Conversely, Canada maintained its tariffs on the importation of dairy products (especially cheese) from the EU but increased the quotas under which such goods could be imported duty-free. In return for these "market access concessions", the Canadian federal government compensated dairy farmers for the losses resulting from higher TRQs.<sup>9</sup> The administration of TRQs on dairy products by the Canadian government has been a source of tensions between Canada and the EU, with the latter accusing the Canadian side of allocating the large majority of quotas (approximately 85 percent) to its domestic dairy producers.<sup>10</sup> The US and New Zealand made similar complaints with respect to Canada's membership in the USMCA and the CPTPP, respectively.<sup>11</sup>

Although the CETA has reduced or eliminated custom duties on agricultural goods traded between Canada and the EU, it has not harmonised or mutually recognised regulations when it comes to the production of such goods. For example, the EU does not allow the importation of beef produced with hormonal growth promoters and antibiotics or originating from carcasses

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<sup>7</sup> For a list of the CETA's chapters, see Annex I.

<sup>8</sup> To benefit from the elimination of custom duties on goods traded, producers had to follow the CETA's rules-of-origin provisions in the agreement's chapter 4.

<sup>9</sup> <https://www.canada.ca/en/agriculture-agri-food/news/2021/01/government-of-canada-takes-next-step-in-compensating-canadas-dairy-farmers.html>).

<sup>10</sup> [https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/2021-11-15\\_ceta\\_comm\\_agri-2021-11-15\\_comite\\_agri\\_aecg.aspx?lang=eng](https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/2021-11-15_ceta_comm_agri-2021-11-15_comite_agri_aecg.aspx?lang=eng).

<sup>11</sup> In September 2023, a CPTPP dispute-settlement panel agreed with some of New Zealand's complaints (<https://www.mfat.govt.nz/assets/Trade-General/WTO-Disputes/Canada-Dairy/Final-Report-of-the-Panel.pdf>).

washed with chlorinated water.<sup>12</sup> If Canadian beef producers want to take advantage of the TRQs offered by the EU, they must put in place separate supply and production chains without hormonal growth promoters and antibiotics. Recognised veterinarians must certify that these facilities follow EU standards. According to a press release issued in September 2022 by the Canadian Cattle Association (CCA), Canada exported only 1,450 tonnes of beef to the EU in 2021 for a value of C\$23.7 million. A similar level of exports in was expected in 2022. In 2017, the CCA had estimated that Canadian beef producers would have close to 65,000 tonnes of duty-free access to the EU market because of the TRQs, which would generate \$600 million in export revenues.<sup>13</sup> Clearly, regulatory differences have been a significant obstacle to Canadian beef producers exporting to the EU. Many producers calculate that the costs of conforming part of their production to EU standards are not worth it.

The CETA would also reduce trading costs arising from technical barriers to trade (for example, technical regulations or testing and certification requirements). It would do so by specifying the steps necessary to have regulations recognised as equivalent by the other party to the agreement, thereby avoiding the costly need for goods to be produced using different standards depending on whether they are meant to be exported or sold at home. In addition, the CETA made it possible for testing and certification bodies to be recognised in both jurisdictions, eliminating duplication in the certification of product and process. Finally, it established mechanisms to encourage regulators and standard-setters from Canada and Europe to co-operate on the development of future technical regulations.

Similar regulatory co-operation mechanisms were established to facilitate trade in services. For instance, the CETA provided a process for the mutual recognition of professional qualifications so that engineers or architects, for example, would be able to offer their services in both jurisdictions, regardless of where they were actually certified. To further facilitate trade in services, the agreement contains provisions to enhance the mobility of skilled professionals and businesspeople between Canada and the EU by making it easier for them to visit or relocate temporarily in the other jurisdiction to provide services or oversee investments and operations.

According to Delimatsis (2017), the CETA “is a GATS-plus agreement in that it builds on the WTO framework to also call for deeper integration in the areas of recognition of professional qualifications (Chapter 11), financial services (Chapter 13), international maritime transport services (Chapter 14), telecommunications and e-commerce (Chapters 15 and 16, respectively)” (595). The CETA also went beyond the GATS by adopting the NAFTA’s negative-list approach.<sup>14</sup>

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<sup>12</sup> These EU restrictions also apply to other types of meat like pork and poultry.

<sup>13</sup> <https://www.cattle.ca/canadian-beef-sector-marks-five-years-of-ceta>.

<sup>14</sup> In a negative-list approach, everything is liberalized unless explicitly excluded whereas in a positive-list approach, only elements specifically mentioned are liberalized (everything else is excluded). Negative lists are generally considered as leading to more liberalizing commitments (Delimatsis 2017: 596). Kerneis (2016) notes that the EU was initially reluctant to agree to a negative-list approach proposed by the Canadian side. The CETA negotiations represented the first time that the EU abandoned its preferred positive-list approach. He argues that the EU’s reluctance was also a result of the fact that member-states had just completed their mutual assessment of national laws and regulations affecting their services sectors, following the entry into force of the EU’s Services



On the other hand, Canada and the EU decided to exclude the following service domains: audiovisual, cultural, social services, gambling and betting, water (collection, purification and distribution), health, and education (Delimatsis 2017: 596).

Another key element found in the CETA is the opening up of government procurement markets, whereby firms from Canada and the EU are no longer subject to discrimination on the basis of their nationality when having their offers of goods and/or services evaluated by public authorities, agencies and enterprises. Chapter 19 gives firms access, with no discrimination or unfair competition (above certain value thresholds), to public markets in the EU and all its member-states as well as in Canada and its provinces, territories, and municipalities. As such, it went further than the plurilateral Agreement on Government Procurement. In principle, the CETA gave European firms much greater access to Canada's provincial and municipal government contracts while Canadian enterprises faced improved access to national and subnational public procurement opportunities in Europe.<sup>15</sup>

The CETA may have opened Canadian and EU government procurement markets to their respective firms but certain public services remained closed. For instance, the EU wanted Canada to end Canada Post's domestic monopoly over the collection, transmission and delivery of letters.<sup>16</sup> For its part, the Canadian federal government wanted to include Canada Post's monopoly as an Annex II reservation, which would have given the government the latitude not only to maintain Canada Post's monopoly over domestic postal services pertaining to "letters" but also to reverse the previous liberalisation of other postal services (e.g., parcels or international letters) (Steinhoff 2014: 40). In the end, the two parties settled for an Annex I reservation for postal services, which protects Canada Post's domestic monopoly over letters but locks in the liberalisation of other postal services (see Reservation I-C-29).

In terms of intellectual property rights, the CETA's protection of EU-based geographical indications were considered a definite benefit for certain European agricultural and food producers.<sup>17</sup> The two-year patent term extension was also seen as mainly advantageous to European firms, although it could drive pharmaceutical investment in Canada.

The CETA's investment court system (ICS) is remarkably different from traditional investor-state dispute-settlement (ISDS) mechanisms, such as the NAFTA's chapter 11 (Gantz 2022). With the ICS, the CETA is moving ISDS toward a judicial format rather than the usual arbitration one that is found in most bilateral investment treaties and trade agreements. The goal with this new approach is to assuage the fears associated with the traditional investor-state arbitration process, namely that the process is biased in favour of the investor and ultimately prevents

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Directive in 2006. It was thus difficult for them and the EU Commission to know what to exclude from the negative list. Kerneis (2016: 241) indicates that it took the EU 18 months to make its first offer on services to the Canadians.

<sup>15</sup> For details on the CETA's chapter 19 on government procurement, see Ruffat and Leblond (2022).

<sup>16</sup> The Canadian federal government deregulated the handling of international letters in 2010 (Steinhoff 2014: 40). The collection, transmission and delivery of parcels had previously been deregulated.

<sup>17</sup> List of recognised EU geographical indications in the CETA: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/20-A.aspx?lang=eng#a>.

democratically elected governments from adopting the laws and regulations that they deem appropriate for their society and economy. Under the CETA, the Canadian federal government and the European Commission would be responsible for appointing the tribunal's members, who presumably would be more partial to governments' democratic prerogative over policy rules and regulations.<sup>18</sup> With the CETA's provisional application, chapter 8 on investment is currently not in force; it will only become so once all the member states have ratified the agreement.<sup>19</sup>

Although the CETA is a third-generation trade agreement and the EU's first of its kind, it is very limited with respect to addressing digital trade issues. Chapter 16 on electronic commerce has only seven articles (compared with 18 for the United States-Mexico-Canada Agreement's digital trade chapter). The only substantive provision is that both parties commit to "not impose a custom duty, fee, or charge on a delivery transmitted by electronic means" (article 16.3, paragraph 1). This provision reiterates Canada and the EU's prior commitment to the WTO's moratorium on the imposition of custom duties on electronic transmissions, which dates as far back as 1998. Otherwise, chapter 16 does not impose any obligation on the parties; it is hortatory in nature to encourage the protection of personal information and the "clarity, transparency and predictability" of domestic regulatory frameworks. Finally, it mentions that the parties have agreed to "maintain a dialogue on issues raised by electronic commerce".<sup>20</sup> As such, in terms of electronic commerce or digital trade, the CETA's chapter 16 does not really add anything to what existed before it came into force. It does nothing to foster greater digital trade between Canada and the EU. For example, it says nothing about data localisation requirements, which represent an impediment to cross-border digital trade. The CETA would also be powerless if the European Commission were to remove Canada's adequacy determination with respect to the EU's General Data Protection Regulation (GDPR), which allows the transfer of personal data from the EU to Canada without firms needing some form of permission or certification.<sup>21</sup> Should the WTO's Joint Statement Initiative on e-commerce reach a successful conclusion,<sup>22</sup> then it could make chapter 16's upgrade unnecessary; however, there are strong doubts about the hoped-for agreement on trade-related aspects of electronic commerce to be an effective tool in fostering greater cross-border digital trade among its signatories (Leblond 2021).

## The CETA's Main Economic Results for Canada and the EU

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<sup>18</sup> For details on appointments and the dispute process, see Whitsitt (2022).

<sup>19</sup> For a list of EU member-states that have ratified the CETA, see Carleton University's CETA Ratification Tracker (<https://carleton.ca/tradenetwork/research-publications/ceta-ratification-tracker/>).

<sup>20</sup> It is remarkable that no meeting of the Dialogue on Electronic Commerce has yet to take place ([https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/ceta\\_governance\\_committees-gouvernance\\_aecg\\_comites.aspx?lang=eng](https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/ceta_governance_committees-gouvernance_aecg_comites.aspx?lang=eng)).

<sup>21</sup> Before renewing Canada's adequacy status, the European Commission is waiting for Canada to adopt a new privacy protection law, which was still under consideration (as Bill-27) by the federal parliament at the time of writing.

<sup>22</sup> [https://www.wto.org/english/tratop\\_e/ecom\\_e/joint\\_statement\\_e.htm](https://www.wto.org/english/tratop_e/ecom_e/joint_statement_e.htm).

From an economic perspective, the CETA appears to have had a positive impact on trade between Canada and the EU in its first five years of existence, for both goods and services. At its third meeting, held in Brussels in early December 2022, the CETA's Joint Committee (ministerial level) issued a statement that said the same: "Following five years of provisional application, Canadian and European businesses are reaping the benefits of CETA two-way trade having increased by over 30%. CETA has boosted job creation for both partners. The Joint Committee received a comprehensive assessment of the strong economic outcomes of the Agreement over the last five years."<sup>23</sup>

Despite the Covid-19 pandemic, which disrupted international trade and investment flows, economic activity between Canada and the EU remains higher than before the agreement came into force. In 2021, bilateral merchandise trade was 34 per cent higher than before 2016, with exports from Canada to the EU growing by 46.4 per cent in 2021 when compared to pre-CETA levels while imports from the EU into Canada grew by 28.4 per cent over the same period (Global Affairs Canada 2022a). In 2021, merchandise trade between Canada and the EU was C\$100 billion, compared to C\$74.8 billion in 2016.

Among Canadian merchandise exports to the EU, the products that enjoyed the largest tariff reductions (more than 10 percentage points) registered the highest growth rate between 2016 and 2021: 54.5 percent on average. In total, products that received tariff reductions under CETA recorded a growth rate of 24.6 percent over the period 2016-2021. Canadian imports from the EU grew at 46.2 percent during the same period; however, there was little variation in growth rates across products with different levels of tariff reductions (Global Affairs Canada 2022a).

On average, the annual rate of growth for Canada-EU bilateral trade was 7.9 per cent in 2018-2019, compared to 4.4 per cent for the period 2011-2016 (Global Affairs Canada and European Commission 2021). Agricultural products, which represented 9.3 per cent of total bilateral trade between the two economies in 2019, increased by 35 per cent between 2016 and 2020. For non-agricultural products, the increase was 10 per cent over the same period, but with a significant decline in machinery, mineral fuels and motor vehicles and parts between 2019 and 2020 because of the Covid-19 pandemic.

Canada-EU trade in services shows a similar trend, with a total growth rate of 39 per cent over 2016-2019 period. Canadian services exports to the EU increased by 37 per cent while EU services exports to Canada grew by 41 per cent. The Canadian services exports to the EU that registered the most increase post-CETA are other business services, transportation and travel services. They accounted for 70 per cent of total services trade in 2019. The three main categories of EU services exports that recorded the most growth post-CETA are commercial services, transportation and travel services (Global Affairs Canada and European Commission 2021). Canada's services exports started to recover from the Covid-19 pandemic in 2021, mainly within the category of commercial services, travel and transportation. Thus, Canada's services

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<sup>23</sup> [https://policy.trade.ec.europa.eu/news/joint-statement-ceta-five-years-cornerstone-canadaeu-economic-relations-2022-12-02\\_en](https://policy.trade.ec.europa.eu/news/joint-statement-ceta-five-years-cornerstone-canadaeu-economic-relations-2022-12-02_en).

exports to the EU grew by 4.2 per cent while Canada's services imports from the EU rose by 11.7 per cent (Global Affairs Canada 2022b).

According to Global Affairs Canada (2022a: 11), only about 25 per cent of Canadian exports to the EU (C\$8.2 billion or €5.5 billion) would have been subject to customs duties without the CETA in 2021. This is because the EU unilaterally made several products duty free for all countries, including Canada, in 2019. Of these "dutiable" exports, 65.4 per cent entered the EU with preferential treatment accorded by the CETA in 2021 (what is referred to as the "utilization rate"), compared to 52 per cent in 2018 (Global Affairs 2022a: 19). For EU exports to Canada, the percentage of dutiable products was the same, at 25 per cent in 2021 (Global Affairs 2022a: 12). Canada also eliminated duties on a large quantity of intermediate goods to support Canadian manufacturing but did so a few years before. The utilisation rate for EU products exported to Canada was 59.5 per cent in 2021, compared to 38.4 per cent in 2018 (Global Affairs 2022a: 27). These utilisation rates are similar to those between Canada and the United States under the USMCA (Global Affairs Canada 2022b: 43).

At the time of writing, it is impossible to assess the economic impact of measures in the CETA aimed at reducing or removing beyond-the-border obstacles to trade between Canada and the EU (i.e., second- and third-generation trade provisions). This is why Global Affairs Canada's (2022a) assessment of the CETA's performance in its first five years is devoted solely to goods and tariff reductions, with particular attention paid to utilisation rates of the agreement's preferences. There is no mention of the impact of regulatory cooperation, government procurement or the mobility of persons. In another report published a few months later, Global Affairs Canada (2022b) acknowledges that other (non-tariff) commitments should be evaluated to determine if they are achieving their intended outcomes. However, it concludes that "it is too early for the impact of these newly introduced, non-tariff commitments to be reliably measured" (Global Affairs Canada 2022b: 65).

### **The CETA as a "Living Agreement"**

To manage the CETA's implementation in an effective and timely manner, the agreement provides an elaborate institutional architecture of general and specialised committees as well as dialogues composed of both Canadian and European officials (see Annex II for details). The reason is that differences in regulatory standards can act as barriers to trade because they can either lead to an import ban if the exporting firm cannot satisfy the importing country's regulatory requirements or, in a similar fashion to a tariff, to additional costs in order to meet the importing country's standards. As a third-generation trade agreement, the CETA aims to overcome these kinds of trade barriers. These committees and dialogues are mandated to manage various regulatory and administrative aspects affecting trade and investment between Canada and the EU. To do so, they are to meet at least once per year. However, cooperation is voluntary and policy-makers and regulators from Canada and the EU are not constrained from adopting new legislation. These committees and dialogues are also expected to engage stakeholders, including businesses and civil society organisations, in discussing regulatory

issues. Institutional coordination is, therefore, crucial to the CETA's effective implementation as a third-generation trade agreement (Camilleri, 2022; Leblond, 2016).

For instance, the Regulatory Cooperation Forum (RCF) is the main discussion platform for regulatory policy consultations with stakeholders, assistance to regulators, review of regulatory initiatives and encouragement of bilateral cooperation. Despite not having decision-making power, the RCF enables and encourages further discussion on bilateral regulatory cooperation between Canada and the EU. The RCF has met five times since its inception, in December 2018, February 2020, February 2021, May 2022 and April 2023. According to Leblond and Viju-Miljusevic (2022), the RCF has been an effective instrument in helping to resolve regulatory issues. To do so, it has notably encouraged the sharing of information between Canadian and European regulatory authorities. However, the authors conclude that it is difficult to determine how effective the CETA's RCF has been because there are no specific criteria for assessing the RCF. For example, if the RCF had met more often, could it have taken on more fields of cooperation or resolve issues faster? The CETA offers no guidelines for determining which issues make it onto its agenda or workplan. It is the same for other committees and dialogues.

Another instance of institutional cooperation between Canada and the EU is the Committee on Government Procurement (CGP). The CGP has met five times since the CETA came into force. It has focused its attention on two key topics: the "single point of access" (SPA) for all government procurement in Canada and space procurement. The SPA is a promise, within the CETA, by the Canadian federal government to create a single platform for all public procurement tenders in Canada, like the EU's Tenders Electronic Daily (TED), from municipal, provincial, territorial and federal governments. By sharing information with respect to legislative and regulatory developments as well as discussing statistics, supplier experience and other stakeholder concerns related to government procurement, the CGP appears to have played the role for which it was established (Leblond and Viju-Miljusevic 2022). Although the SPA is still under development, it is nevertheless functional under the "CanadaBuys" website, likely thanks to the CGP, which forced the Canadian side to provide regular updates on its progress (ibid).

Another promise of the CETA that has taken a long time to bear fruit is the mutual recognition of professional qualifications, which is necessary if business professionals can offer their services in the other party's territory. The CETA's chapter 11 aims to get Canadian and EU authorities to negotiate and sign mutual recognition agreements (MRAs) that allow qualified professionals (or technicians) to provide services and act according to their formal qualifications and be legally recognized as such in both Canada and the EU. Concluding such MRAs is particularly challenging because professional qualifications are provincial competencies in Canada while they remain under the responsibility of member states inside the EU. In other words, the Canadian federal government and the European Commission, which are responsible for the CETA's implementation, can only encourage occupational regulatory bodies in Canada and the EU to propose and negotiate MRAs with each other; they have no legal authority to mandate such agreements. They are supposed, through the MRA Committee, to provide a framework for negotiating and concluding MRAs, including their approval. It is only in March

2022 that the first MRA was concluded (for architects).<sup>24</sup> Negotiations between the Architects' Council of Europe and the Canadian Architectural Licensing Authorities began in April 2019. Again, according to Leblond and Viju-Miljusevic (2022), it is unlikely that such an MRA would have happened without the CETA and the MRA Committee.

The CETA Joint Committee is the agreement's ultimate decision-making body. Its decisions are binding on the parties. It is "co-chaired by the Minister for International Trade of Canada and the Member of the European Commission responsible for Trade" (article 26.1). It must meet at least once per year. Because of the Covid-19 pandemic, it has met only three times since the CETA came into force: September 2018, March 2021 and December 2022. So far, it has adopted two decisions. The first concerns the "administrative and organisational matters regarding the functioning of the Appellate Tribunal",<sup>25</sup> which will only come into force once the CETA has been ratified by all the EU's member-states and is no longer provisionally applied. The second decision sets out the procedure for the adoption of interpretations regarding investment disputes (part of the CETA's chapter 8) by the CETA Joint Committee, which "shall be binding on the Tribunal and Appellate Tribunal".<sup>26</sup> Otherwise, the CETA Joint Committee has been about taking note of the CETA's trade performance and implementation, identifying joint priorities (for specialised committees and dialogues to focus on), and reinforcing cooperation between Canada and the EU. For example, it has issued a formal recommendation that both parties "cooperate, work together and take joint actions as relevant to address climate change and promote the mutual supportiveness of trade and climate policies, rules and measures" to help achieve the Paris Agreement's objectives.<sup>27</sup> It has also issued formal recommendations on cooperation regarding SMEs and trade and gender. Ultimately, the CETA Joint Committee is the institutional venue that keeps the CETA "alive". It does so by setting the agenda for the specialised committees, reviewing progress on implementation issues, helping to resolve disputes (formal and informal) and identifying and promoting areas for further cooperation between Canada and the EU.

In sum, without the CETA and its extensive institutional setup, it is highly likely that many beyond-the-border accomplishments over the last five years would not have happened without the involvement of the CETA's various committees and dialogues. Progress on such issues, however, take time to resolve because they require the cooperation of several actors (e.g., different levels of governments and/or different ministries or agencies as well as businesses and other civil society organisations) whose interests are not always aligned. A certain degree of political and/or bureaucratic inertia adds another layer of complexity to slow down the process.

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<sup>24</sup> According to the Regulatory Organizations of Architecture in Canada, the MRA was expected to be ratified by the Canadian and European parliaments in 2023 (<https://roac.ca/professional-mobility/europe-ace/>).

<sup>25</sup> <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/appellate-tribunal-dappel.aspx?lang=eng>.

<sup>26</sup> <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/procedure-adoption-interpretations.aspx?lang=eng>.

<sup>27</sup> <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/rec-001.aspx?lang=eng>.

Devoting more human and financial resources for managing and implementing the CETA, as Leblond and Viju-Miljusevic (2022) suggest, would help overcome these institutional challenges to resolving trade-related issues of an administrative or regulatory nature between Canada and the EU. Finally, data and statistics on non-trade elements of the Canada-EU economic relationship – such as, for example, CETA visas, government procurement contracts to Canadian firms in the EU or EU firms in Canada, and the harmonisation or mutual recognition of rules, standards, processes and procedures – would make it easier for Canadian and EU authorities to get a more comprehensive picture of the CETA's performance and implementation (Leblond and Viju-Miljusevic 2022).

## **Conclusion**

Overall, the CETA can be deemed a successful agreement. Trade between Canada and the EU has increased substantially since it came into force in September 2017, although it remains unclear the extent to which this growth is related to the elimination of tariffs compared to the removal or reduction of non-tariff obstacles to trade. The CETA has also made possible some degree of regulatory and administrative cooperation, even if it may have taken longer than originally hoped for. Finally, the CETA has served as a strong basis for Canada-EU cooperation on broader issues of mutual concern like, for instance, climate change and the green transition.

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## ANNEX I

### The Comprehensive and Economic Trade Agreement<sup>28</sup>

PREAMBLE

CHAPTER ONE - GENERAL DEFINITIONS AND INITIAL PROVISIONS

CHAPTER TWO - NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

CHAPTER THREE - TRADE REMEDIES

CHAPTER FOUR - TECHNICAL BARRIERS TO TRADE

CHAPTER FIVE - SANITARY AND PHYTOSANITARY MEASURES

CHAPTER SIX - CUSTOMS AND TRADE FACILITATION

CHAPTER SEVEN - SUBSIDIES

CHAPTER EIGHT - INVESTMENT

CHAPTER NINE - CROSS-BORDER TRADE IN SERVICES

CHAPTER TEN - TEMPORARY ENTRY AND STAY OF NATURAL PERSONS FOR BUSINESS PURPOSES

CHAPTER ELEVEN - MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

CHAPTER TWELVE - DOMESTIC REGULATION

CHAPTER THIRTEEN - FINANCIAL SERVICES

CHAPTER FOURTEEN - INTERNATIONAL MARITIME TRANSPORT SERVICES

CHAPTER FIFTEEN - TELECOMMUNICATIONS

CHAPTER SIXTEEN - ELECTRONIC COMMERCE

CHAPTER SEVENTEEN - COMPETITION POLICY

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<sup>28</sup> For details and descriptions of what each chapter contains, see [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/canada/eu-canada-agreement/ceta-chapter-chapter\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/canada/eu-canada-agreement/ceta-chapter-chapter_en).

CHAPTER EIGHTEEN - STATE ENTERPRISES, MONOPOLIES, AND ENTERPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES

CHAPTER NINETEEN - GOVERNMENT PROCUREMENT

CHAPTER TWENTY - INTELLECTUAL PROPERTY

CHAPTER TWENTY-ONE - REGULATORY COOPERATION

CHAPTER TWENTY-TWO - TRADE AND SUSTAINABLE DEVELOPMENT

CHAPTER TWENTY-THREE - TRADE AND LABOUR

CHAPTER TWENTY-FOUR - TRADE AND ENVIRONMENT

CHAPTER TWENTY-FIVE - BILATERAL DIALOGUES AND COOPERATION

CHAPTER TWENTY-SIX - ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

CHAPTER TWENTY-SEVEN - TRANSPARENCY

CHAPTER TWENTY-EIGHT - EXCEPTIONS

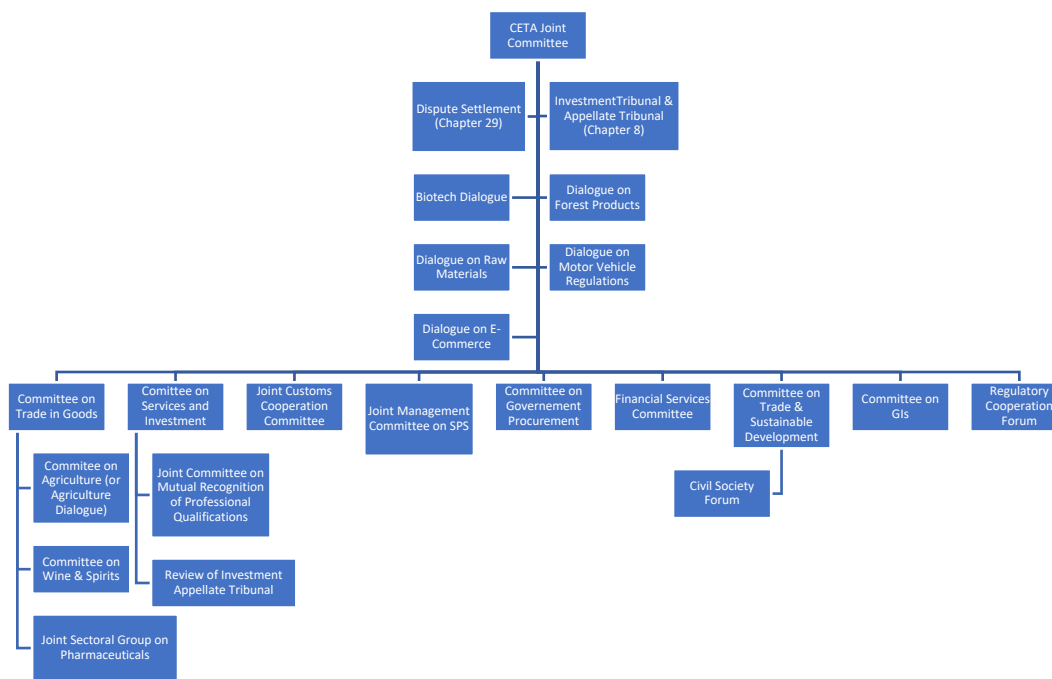
CHAPTER TWENTY-NINE - DISPUTE SETTLEMENT

CHAPTER THIRTY - FINAL PROVISIONS

ANNEXES

## ANNEX II

### The CETA's Institutional Framework<sup>29</sup>



### Committees

- CETA Joint Committee (Article 26.1)
  - Committee on Trade in Goods (Article 2.13, Article 26.2)
    - Committee on Agriculture
    - Committee on Wine and Spirits
    - Joint Sectoral Group on Pharmaceuticals
  - Committee on Services and Investment (Article 8.44, Article 26.2)
    - Joint Committee on Mutual Recognition of Professional Qualifications (Article 11.5)
  - Joint Customs Cooperation Committee (Article 6.14, Article 26.2)
  - Joint Management Committee on Sanitary and Phytosanitary Measures (Article 5.14, Article 26.2)
  - Committee on Government Procurement (Article 19.19, Article 26.2)
  - Financial Services Committee (Article 13.18, Article 26.2)
  - Committee on Trade and Sustainable Development (Article 22.4, Article 26.2)

<sup>29</sup> The list of meetings and reports of the CETA's committees and dialogues and their activities can be found here: [https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/ceta\\_governance\\_committees-gouvernance\\_aecg\\_comites.aspx?lang=eng](https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/ceta_governance_committees-gouvernance_aecg_comites.aspx?lang=eng) (last consulted on June 7, 2023).

- Committee on Geographical Indications (Article 26.2)
- Regulatory Cooperation Forum (Article 21.6, Article 26.2)

### *Dialogues*

- Biotech Dialogue (Article 25.2)
- Dialogue on Forest Products (Article 25.3)
- Dialogue on Raw Materials (Article 25.4)
- Agriculture Dialogue (Article 2.13)
- Dialogue on Motor Vehicle Regulations (Annex 4A, art. 3)
- Dialogue on Electronic Commerce (Article 16.6)
- Civil Society Forum (Article 22.5)