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The Canada-European Union Comprehensive Economic and Trade Agreement (CETA): A Convergence of Canadian and EU Interests

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The purpose of this brief is to highlight the significance of the Comprehensive Economic and Trade Agreement (CETA), whose final text was approved in 2016 and is expected to come into force in the near future. From the Canadian perspective, this trade treaty represents the high point of Canada’s relations with the European Union (EU). From the EU’s perspective, this treaty represents a significant step in its pursuit of trade agreements with many countries of the world, and in all probability is seen as an important step towards a similar agreement with the United States, and possibly towards the ultimate goal of a North Atlantic Free Trade Agreement. CETA is significant for Canada–EU relations from the political, the procedural, and the substantive perspectives. This brief illustrates all three dimensions.

Politically, CETA constitutes a significant step for both Canada and the EU. Canada had been attempting for over a decade to replace the 1976 Framework Agreement with the European Economic Community (EEC), an agreement that did little more than provide a forum for semi-annual meetings of senior officials. The Framework was seriously outdated, and Canada needed to move beyond the confines of the North American Free

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Trade Agreement (NAFTA) in order to set its trade relations with major partners on new footing. NAFTA remains a central element of Canadian trade policy, but failure to update and renew it coupled with rapid economic changes throughout the world has led to the realization that Canada was unwise to place too much emphasis on trade with the United States. One part of a new strategy required strengthening relations with emerging economic giants in the Far East, but it was equally important for Canada to consolidate its relationship with historic trading partners in Europe. After years of seeking a trade agreement with the EU, and after signing an agreement with the rump of European Free Trade Association (EFTA) states, the Canadian Government welcomed the willingness of the EU Commission to open negotiations in 2011 and made very considerable efforts to ensure their early conclusion.

From the EU's perspective, CETA can be seen as one of an extensive programme of trade agreements. However, several aspects set it off as being particularly important. In terms of format and content, CETA should be classed as the first of the "Mega-regionals" comparable to the Trans-Pacific Partnership (TPP), Transatlantic Trade and Investment Partnership (TTIP), or the Regional Comprehensive Economic Partnership (RECP). These new agreements are being hailed as "mega" agreements due to their very extensive scope and the wide number of parties. The ambition and scope of CETA sets it off from other recent EU trade agreements and puts it in a class of its own. Secondly, CETA can be reasonably seen as a precursor to the goal of an eventual TTIP between the EU and the United States.

Several aspects make CETA important from the procedural perspective. For the time being, both parties have set aside traditional preferences for multilateral approaches to advance trade policy. In signing such a comprehensive trade agreement, Canada and the EU have ushered in the era of the mega-regional trade agreement. In a very real sense, CETA has the potential to be the model for future trade agreements that NAFTA has been for the past 20 years. Paradoxically, the very scope and depth of CETA, together with other mega-regionals, may well lead to the establishment of global trade patterns and ultimately make possible the adoption of the next set of universal trade rules. The format of the negotiations was unique from the Canadian perspective in that Canada agreed to have provincial negotiators present at the table whenever provincial interests were under discussion.

Substantively, CETA has much that is novel and that sets it apart from previous trade agreements signed by either party. CETA is, as the title suggests, comprehensive. The scope of CETA takes it beyond previous regional trade agreements (RTA). It covers all the ground of previous major trade agreements and then goes into areas never brought together in a single RTA.

Chapters 1-4 on trade in goods expand the opportunities for trade between both parties. Canada, in particular, obtains tariff-free and non-discriminatory access to the 28 Member States of the EU for its goods. Both sides made extensive concessions with

respect to trade in services in Chapters 10-12 and 15-17. Canada agreed to allow access to provincial services and procurement far beyond the limits of the General Agreement on Trade in Services (GATS) or the North American Free Trade Agreement (NAFTA). CETA takes a negative list approach to exceptions, something the EU had been reluctant to adopt until this point.

Among the most innovative features of CETA are Chapters 13-29 dealing with regulatory cooperation and consultation as well as Chapter 13 dealing with the recognition of professional qualifications. Beginning with Chapter 13 on the philosophy of regulation, combined with several chapters (23-25) setting out the means of promoting common approaches to regulation in relation to public policy issues such as environmental protection and labour standards, CETA contains the seeds of an approach that may see EU regulatory approaches expanded beyond its borders. The annex dealing with the promotion of common approaches to the setting of standards for auto parts is particularly innovative and could see the emergence of common construction standards for North American auto production, if the United States agrees to the same approach. It is often said that regulatory cooperation is the next great objective of international trade law. Chapter 18 on e-commerce innovates and Chapter 18 on IP protections is controversial in light of the concessions Canada had to make.

Throughout CETA, one can see that both parties share many of the same concepts of public policy. Both are concerned with ensuring that governments continue to exercise leadership in economic and social policy and allowing governments appropriate room to manoeuvre as economic regulators. This may be harder for the United States to accept in a future TTIP, but Canada and the EU share a common vision of public policy. On the controversial issues of investment protection and the related procedure of investor-state arbitration, the EU appears to have accepted many of the policies inherent in the Canadian Model Foreign Investment Protection Agreement (FIPA). The text of Chapter 11 on investment protection calls for investor-state arbitration to resolve complaints by foreign investors of either party and is drafted very much along the lines of the Canadian Model FIPA. But last minute fears in Europe concerning the impact of a similar arrangement with the United States compelled the Commission to propose the adoption of an investment court rather than arbitration. Canada regards the CETA text as closed, but this may still be an issue as EU Member States proceed with ratification of CETA.

Regardless of last-minute difficulties, it is hard to escape that conclusion that CETA represents a convergence of interests and trade philosophy between Canada and the EU. This agreement is likely to serve as a benchmark against which future trade agreements around the world will be measured for many years to come.