

EU-Canada Network Policy Brief

Implementing CETA: A Preliminary Report

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August 2019

Policy Brief produced for the *Jean Monnet Network on EU-Canada Relations: The EU and Canada in Dialogue*, which is supported by a grant from the Erasmus+ Programme of the European Union. The Network is housed at Carleton University in Ottawa, Canada, <https://carleton.ca/caneunet/>.



Co-funded by the
Erasmus+ Programme
of the European Union

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Executive Summary

The Canada-European Union Comprehensive Economic and Trade Agreement (CETA) was signed by the two parties on October 30, 2016. Most of its elements went into provisional application on September 21, 2017. This policy memo provides a detailed overview of how the agreement's provisional application is being applied during this phase, and outlines some of the remaining contentious aspects. The brief explores important areas for research regarding the agreement's impact, both in its provisional and longer-term application. The overview is an updated version of the author's presentation at the *Workshop CETA and Progressive Trade Agreements: What It Means for the EU and Canada* (University of Antwerp, May 22, 2018) also drawing on the preliminary findings of an ongoing project on "CETA Implementation and Implications (CIIP)"², funded by the Erasmus+ Programme of the European Union, which Dr. Finbow directs.

CETA as Gold Standard

CETA is hailed as a gold standard for trade agreements. It reflects many of the EU's liberalizing goals regarding trade policies in the wake of the global financial crisis. CETA addresses a wide range of themes, going beyond tariffs on traded goods, favoured status for EU and Canadian exporters, trade in services and so-called technical barriers to trade; it seeks, albeit gradually, coordination between government agencies to promote regulatory cooperation, harmonization or mutual recognition of standards. Via collaboration among professional associations on both sides of the Atlantic, CETA also incrementally promotes professional mobility and recognition of credentials and qualifications. In addition, it includes provisions related to intellectual property, notably patent protection including for pharmaceutical goods. It extends access to the parties' public procurement contracts at all levels of government. Finally, it proposes an innovative investor-state dispute settlement

² The project, directed by Prof. Finbow, was launched with a workshop at Dalhousie University in May 2018 on "CETA Implementation, the Next Steps," which gave participants from academia, government and stakeholder groups opportunity to present their original research and engage with colleagues on the Canada-EU CETA agreement. In 2019 a conference hosted by Dalhousie University will invite up to 50 participants to present their research on CETA implementation and the implications of the agreement for legislation, regulation and public policy. These events will be accompanied by the publication of papers to disseminate the analysis and spread information on CETA implementation from multiple scholarly and analytical perspectives. This Erasmus + funded project is a wide-ranging interdisciplinary initiative, bringing together academics and practitioners across law, politics, economics, environmental studies, public administration and management; it has also academic breadth across Canada, US and several EU states.² More information about the project is available at the project website: ciipdal.ca

(ISDS) system, which involves the creation of a permanent investment court system (ICS) in place of ad hoc arbitration of investment matters.

In the early stages of negotiation, in the context of the 2007-2009 global financial crisis and the subsequent euro-area crisis, the negotiators sought liberalized approaches to all of these areas. The actual draft of CETA was concluded after a change of government in Canada and substantial political controversy in Europe, which brought some substantial adjustments to address social push-back. That social push-back was triggered, in part, by concerns raised in the context of unsuccessful negotiations that occurred between the EU and US from 2013 and 2016 for a potential Transatlantic Trade and Investment Partnership (TTIP). Civil Society raised concerns especially respecting investment disputes mechanisms. Using standard private arbitration systems, critics feared investors could arguably secure judgements and penalties that could dissuade member states from adopting regulations on matters such as the environment, and health and safety etc. Civil society organizations engaged in advocacy which pressured member states, and eventually the EU, to hold public consultations. As a result, the Commission proposed the innovative investment court model (ICS), which was accepted by Canada and incorporated into CETA. Despite the adjustments made, notably the ICS and compromises on tariff rate quotas in agricultural products like dairy and meats, CETA retained its comprehensive character.

Canada's CETA approval received royal ascent in May 2017 with the provisional implementation date determined for September 21. Pursuant to Canada's commitments under the Vienna Convention on the Law of Treaties, this implied that CETA would have immediate legal effect in many areas. For instance, Section 3 of the CETA Implementation Act ensures that "the Act and any federal law that implements or fulfills the Agreement will be interpreted in a manner consistent with the Agreement. This clause is intended to remove any ambiguity that might exist in domestic law regarding the interpretation of the implementing measures". The government further noted: "With the passage of the *CETA Implementation Act* and related regulatory and administrative action, the Government of Canada will have taken the steps necessary to implement the Agreement in Canada at the federal level" (Canada 2017b). In the first year of implementation, according to officials at the North America office at DG Trade, the Canada-EU joint committee was active, and some 19 bilateral specialized committees and 5 bilateral dialogues were created. (Interviews, July 7, 2019). At the Joint Committee's first meeting in September 2018, agreements were reached on climate action to implement the Paris accord, gender and trade, and small and medium enterprises in CETA.

Implementation is beginning to take shape in some of the less contested areas of the agreement, notably trade in goods. For instance, the federal government issued a notification in advance of preliminary application indicating the immediate effectiveness of tariff reductions or the beginning of phased-in reductions depending on the product. This move triggered a series of "regulatory amendments and new regulations under the Customs Act related to the CETA", notably the creation of a new Canada-European Union Tariff (Canada 2017). In addition to phased-in provisions, specific rules applied to particular products, with restrictions and limitations as outlined in detailed annexes to the CETA, for

instance, regarding automotive, fish and seafood and “quota textiles and apparel products”, which had specific rules of origin as well as volume limitations on imports (CETA Annex 5, 6). Trade in automobiles and auto parts was subject to gradual tariff reductions with exemptions for sensitive lines, increased quotas for cars made with significant Canadian contributions and gradual relaxation of rules-of-origins provisions, especially considering the deep integration of the US and Canadian automotive sectors.

Table 1: Trade in Goods: Summary of CETA provisions

Goods	Provision
Overall goods trade	98 % duty-free at implementation (Sept. 21, 2017) 99 % duty-free 7 years after implementation
Industrial products	99.5% tariff free at implementation (Sept. 2017)
Forest products:	duty free at implementation
Metal Products:	duty free at implementation
Oil and Gas products:	duty free at implementation
Chemical and Plastics products:	duty free at implementation
Telecommunications products:	duty free at implementation
Phase-out in sensitive sectors	gradual implementation or via tariff rate quotas (TRQs)
Fish and seafood products:	95.5% tariff free rising to duty free in 3-7 years using TRQs
Agriculture	gradual with exemptions/TRQs in sensitive products
Automobiles	duty free in 3-7 years; gradual relaxation of rules of origin

While processed and raw agricultural products would in many instances see substantial tariff reductions (as much as 10 to 25%), in other areas politically important products were treated differently with phase-out of duties or assignment of a “tariff rate quota” (TRQ) to limit imports. Some agricultural goods were “sensitive products, which will either be offered as a TRQ (dairy) or excluded altogether from liberalisation commitments (chicken and turkey meat, eggs and egg products)” (European Commission, 2017). The political sensitivities of Canada’s marketing board system in these areas prevent further liberalization. Similarly, the EU’s entry price system, which protects producers of fruits and vegetable staples, would also remain in place. The EU also maintained TRQs (but with zero tariffs) in sensitive areas like beef, pork, and canned sweet corn (European Commission, 2017). These complexities ensured a lengthy implementation process, as laws, regulations, and operating practices of customs officers are gradually adjusted to the new CETA regime.

Several other important elements of the agreement were provisionally applied immediately. For instance, chapters relating to services and investment (except investor-state disputes via the proposed Investment Court System, ICS) and intellectual property were given immediate effect. The accord also permitted temporary entry of professional visitors and persons traveling for investment or business purposes or to provide specialized services and information. Access to government procurement at all levels of government was also quickly opened, for procurement contracts above specified thresholds of contract value (CETA, Chapter 19). The development of common databases and information sources would follow; the parties were given 5 years to create a Single Point of Access (SPA) for government procurement and coordination on judicial appeals procedures on procurement issues. Processes to address sanitary and phytosanitary issues (CETA, Chapter 5) and technical barriers to trade (CETA, Chapter 4) were also simplified, though with substantial detailed work remaining as the parties agreed to work on recognition of equivalent standards as issues arose, using technical consultations backed by audit and verification processes and “conformity assessments”. Work, under the auspices of the Joint Customs Cooperation Committee, also commenced immediately on customs and trade facilitation, working towards a system to create transparent, streamlined and predictable customs processes (CETA, Chapter 6).

Limits on CETA’s Provisional Application

The creation of the ICS mechanism encountered challenges from some member states, since disputes resolution and indirect investment were seen as member state competencies. This led to litigation which extended beyond the date of provisional implementation. With litigation outstanding on the ICS when CETA entered into force, only limited aspects of Chapter 8 on investment were provisionally applied, relating only to foreign direct investment (and not indirect or portfolio investment). These include Articles 8.1 to 8.8, relating to definitions, market access, and performance requirements; national treatment and most favoured nation treatment; and senior management and directorships. Also provisionally implemented are Articles 8.13 on investment transfers, 8.15, reservations and exceptions, and 8.16 on denial of benefits. Investment disputes elements are awaiting the outcome of both litigation and national political decisions and ratifications. For similar reasons, elements of Chapter 13 on Financial Services were not provisionally applied where they affected indirect portfolio investment, investment protection and investor-state disputes resolution. These exemptions affected Article 13.2 paragraphs 3 and 4, and all of Article 13.3 and Article 13.4, Article 13.9, and Article 13.21. Hence, many of CETA’s innovative elements on investment disputes and the ICS remain in abeyance and with an uncertain fate. The Court of Justice of the EU (CJEU) has affirmed the compatibility of the ICS with EU law, but given the mixity of the deal, it remains to be ratified by several states at time of writing. Ratification by more states could be expected now that the legal hurdles to the ICS have been removed.

Table 2: Major litigation on CETA

Date	Litigation
16 May 2017	EU Singapore reference: Opinion 2/15 CJEU decision Court confirmed shared jurisdiction for non-direct investment and investor state disputes development; these items at least need to be subject to national state ratification (comparable provisions in CETA affected)
6 September 2017	Belgium requested to European Court of Justice on ICS compatibility with EU law (Opinion 1/17)
31 July 2017	French Conseil constitutionnel (Constitutional Council) ruled nothing in CETA violated French constitutional laws
6 March 2018	Case 284/16 Slovak Republic v. Achmea EU: C:2018:158. Court overruled. Provision enabling an investor from one member state to bring proceedings before a bilateral arbitral tribunal in the event of a dispute with another member state
29 January 2019	Belgium case Opinion 1/17 Advocate general's opinion (non-binding) ICS system affirmed as compatible with EU law; Achmea case law ruled inapplicable
April 30, 2019	Belgium case Opinion 1/17 CJEU decision Advocate general's opinion confirmed; ICS system affirmed as compatible with EU law

While the primary focus of the critiques and litigation has been on investment, rulings such as that by the German Constitutional Court³ introduced uncertainty in other chapters. This meant a few additional clauses could not be provisionally applied. Several of these related to uncertainty about the legal status of administrative proceedings, as well as review and appeal in member states where constitutional provisions made it unacceptable for the EU institutions to make final judicial determinations. For instance, this led to the exclusion of Article 27.3 on administrative proceedings and Article 27.4 on review and appeals. Article 20.12 on copyright, as relates to video camcording, was also not provisionally applied, indicating some continued uncertainty over intellectual property provisions as well. A further exclusion applied to Paragraph 7 of Article 28.7 with respect to proceedings requested by an investor to determine if tax policies or amendments are in violation of investment rules on non-discriminatory treatment.

In addition, implementation of the social chapters faced some qualifications, owing to ongoing uncertainty over EU or member states competencies on matters of labour rights and protections, the environment, etc. Hence provisional application of Chapters 22, 23 and 24 had to be undertaken so as to “respect the allocation of competences between the Union and the Member States,” which remained unclear after the German Constitutional Court ruling. For its part, the Canadian government took pains to ensure that its

³ For documents pertaining to this ruling see <https://www.iisd.org/itn/2016/12/12/only-a-brief-pause-for-breath-the-judgment-of-the-german-federal-constitutional-court-on-ceta-jelena-baumler-baeumler/>

implementation acts and regulations were also read with some provisos; “nothing in the *CETA Implementation Act* or the Agreement, with the exception of Chapters Twenty-Two and Twenty-Four of the Agreement, applies to natural surface or ground water” in keeping with Article 1.9 of CETA (Canada 2017b). Additionally, mobility and mutual recognition of qualifications for professionals will be gradually implemented as professional associations on both sides of the Atlantic work out mobility rights agreements. There remain ratification complexities that threaten the implementation of important parts of CETA, especially the investment provisions. Even provisional implementation remains uncertain as the slow pace of ratification meant most major EU member states were not onboard with CETA by mid-2019. For instance, Italy’s new populist coalition government threatened to veto it altogether as it objected to provisions that, it was felt, did too little to protect geographic indicators for speciality products, especially cheeses (Reuters, 2018). Other governments awaited the CJEU decision before beginning or resuming their domestic ratification processes (Khan, 2018); France has now ratified CETA in the aftermath of that decision. It remains to be seen if the pace of ratification will accelerate given the CJEU decision, but complex political situations in countries such as Germany and Italy remain potential obstacles to ratification: the vote in France was close and accompanied by significant social protest.

Table 3: Timeline of CETA ratification

Date	Country
15 February 2017	European Parliament approval
23 February 2017	Latvian Parliament ratification
16 May 2017	Canadian Parliament's bill on CETA received Royal Assent
1 June 2017	Danish Parliament ratification
26 July 2017	Malta notifies EU of ratification
21 September 2017	CETA provisionally applied subject to limits
9 November 2017	Croatia notifies EU of ratification
10 November 2017	Estonia notifies EU of ratification
16 November 2017	Czech Republic notifies EU of ratification
13 December 2017	Spain notifies EU of ratification
31 January 2018	Portugal notifies EU of ratification
5 May 2018	Lithuania notifies EU of ratification
09 October 2018	Sweden notifies EU of ratification
08 November 2018	UK notifies EU of ratification
03 January 2019	Finland notifies EU of ratification
25 May 2019	Austria notifies EU of ratification
23 July 2019	France Parliament ratifies CETA

Source: European Council, database of treaties and agreements and news reports – as of July 25, 2019.

Preliminary Implementation: The Research Agenda

Notwithstanding the pitfalls and delays in implementation, researchers affiliated with the CIPP are already working on a variety of themes. These will be summarized here with references to the authors who are working on these topics (see Appendix 1).

Well advanced work is being done on *business expectations, transatlantic collaboration of firms and business associations to promote shared interests*. Business sector representatives have been among the most vocal proponents of the deal and have a well-developed sense of what they expect to accomplish, the opportunities and challenges they face as implementation proceeds (Hübner). One area of interest is the needs of small and medium firms, which face obstacles in market research and corporate planning to enhance their European presence and prepare for increased competition from EU firms in their home markets. The Canadian Trade Commissioner Services, which reported on their activities, has been busy since provisional implementation providing outreach sessions for business and stakeholders drawing upon experts in their Canadian and European offices; this agency has also organized events in the EU itself, to familiarize businesses and officials with the opportunities and details of CETA as it is implemented (Bourassa).

Analyses of *public services provisions* have focused on the effects of the EU adoption of a Canadian style “negative list” for excluded services, as well as varying reservations among provinces and member states. Also, at issue is the effectiveness of the Joint Interpretive Instrument (JII), which is meant to shield public services from deleterious effects of CETA rules on market access, investment protection and the retention of governmental authority and autonomy. The JII asserts the right of governments “at all levels, to provide and support the provision of services” including health education, social services and housing and “the collection, purification and distribution of water” and the right to renationalize services that were previously privatized. Scholars have questioned whether these guarantees will supersede market access and investor rights. The implications of CETA, if privatization occurs, and the impact on the creation of new services in the future have still to be determined (Sinclair).

Public procurement is also contested, as some lament that cities and provinces will lose flexibility to favour local enterprises for development and job creation. CETA does create thresholds meant to preserve small contracts for local entrepreneurs who could not provide higher-end services and goods on larger contracts. Early research by Schwartz, Schwartz and Lysenko for the workshop suggests that Canadian cities have not effectively used procurement for developmental purposes, choosing contractors based on best bids in most cases. Non-local businesses face barriers relating to business practices and regulations, which means they are unlikely to compete frequently for local contracts. Nonetheless, the effects of a centralized procurement database and increase contract thresholds warrant study. Again, the JII’s meaningfulness will be put to the test. Will the guarantee for social, environmental, and labour considerations in “procurement in a way that is not discriminatory and does not constitute an unnecessary obstacle to international trade” prove meaningful?

Provinces are gearing up to take advantage of *labour and professional mobility and mutual recognition of professional credentials*. For some provinces these measures will provide possible solutions to the skills crisis, generated by lower birth rates and out-migration of youth. This is particularly true for rural areas of provinces like Nova Scotia, where immigration of young, skilled persons has been identified as an urgent priority (Spittal). Provinces with longer engagements in the mutual recognition of professional qualifications, notable the Quebec-France agreement, have found these to be a lengthy, inconsistent and ineffective processes, beset by resistance and delay across many professional associations (Gariépy). Assessing the implementation of mobility and professional recognition processes will be an important element as CETA is put into practice. The Trade and Labour chapter is also of interest as it preserves different practices on each side of the Atlantic. But in some respects, it adopts the EU's preference for consultation and informational exchange and does not provide for trade or financial enforcement like NAFTA (Rioux and Zinni). Supporters argue that as labour protections in these cases are strong, the lack of enforcement is not an issue; but critics note the potential for backsliding. Measures taking away from labour rights could not be addressed by sanctions, as could happen on market access and investment disputes.

Investment and investment disputes settlement have been the most contested aspects of CETA. It is unclear whether the EU's vision for a broader multilateral investment court could achieve fruition. But countries like Canada might face confusing circumstances from membership in different, potentially incompatible investment agreements (Alschner). In the Achmea decision, the Court of Justice of the European Union questioned the adjudicative role of such courts under bilateral investment treaties. These usurped domestic courts and undercut the CJEU's role as adjudicator of EU law; if its ICS system was similar, CETA might fall afoul of this ruling. Tracing the implications of this decision and seeking solutions for the ICS as it moves forward will produce interesting research directions for legal scholars (Vanhonnaeker). The investment court provisions cannot take effect until more states ratify after the CJEU decision to Belgian challenge in Opinion 1/17. Future EU trade agreements will require separation from investment treaties to avoid becoming mixed agreements requiring unanimous member state ratification. This approach has been undertaken in respect to EU negotiations with Singapore, Japan, Australia and New Zealand for instance. But even if the ICS is implemented, it may not solve the problems of the current investment arbitration system (Whitsitt). Much interesting research remains on this contested aspect of CETA, which faces a challenging path to implementation.

Environmental implications continue to be controversial. Both parties express commitments to sustainability and CETA incorporates chapters to address these issues, covering regulatory and legislative freedom on protection of the environment and human health; facilitating trade and investment, which can help to address climate change; and fulfilling the parties' commitments on sustainable development. It will be important to gauge the impact of the investment and goods trade provisions, and their implications for environmental regulation and protection, whether investment provisions can be used to impose costs, which dissuade ecologically sound policies (Blaise). Some scholars and

stakeholders query the enforceability of environmental rules as opposed to the trade provisions. If the commitments made are soft, effective implementation is unlikely. If the enforcement of these commitments is weak, and secondary to economic considerations, then the impact on domestic regulatory space could be significant (Morin). One important focus is on the effects of CETA on high impact areas of energy and waste management. CETA and other agreements fit into a complex configuration of legal and regulatory measures that can affect the governance of energy related development, energy goods and services trade, investor rights, ecological impacts, sustainable alternatives and political perceptions of the CETA (Santoire and Hird).

Agricultural sections have generated extensive controversy and the parties have only reluctantly agreed to adjust their practices. In their paper for the workshop, Mussel and Hedley described the agricultural goods component as a “cheese for meat” deal with adjustments in cheese quotas to meet European goals and beef and pork quotas to help Canada’s producers access EU markets; lingering concerns about specifics of distribution in the dairy sector and treatment and inspection procedures in meats are still to be resolved as implementation proceeds. How producers will rise to the challenge of meeting expanded quotas in some products remains to be determined and provincial pricing and management of products like wines create ongoing complications. Geographic indicators (GIs) were another key EU demand to protect products based in specific geographic regions, such as wines and cheese. CETA offers a compromise, allowing some products made in Canada to be grandfathered in their use of geographic terms, creating transition periods for respecting some GIs and possible labelling to indicate that foodstuffs are not actually from a region but made in a similar style. The balance between Canada’s trademark system and the EU’s *sui generis* GIs will create complications in implementation (Froldi). Already, countries like Italy have expressed dissatisfaction with the scope of GI protection, to the point that ratification might be affected. The balancing between protecting product authenticity (for instance the taste of a wine from geographic and climatic conditions) and the opening of commerce is a difficult one with competing interpretations. Complexities in these interactions involve issues of food labelling and safety, competitiveness, and sustainability (Wirth), which warrant critical scrutiny as implementation proceeds. Access to quotas in dairy, wines and spirits, beef and pork remain some of the more contested elements of provisional implementation so far.

While *intellectual property* (IP) provisions cover a range of issues, patent terms in pharmaceuticals have been a prominent area for discussion. Early impacts in this area are notable, with Canada’s adoption of changes in anticipation of CETA, to its notice of compliance provisions to eliminate “dual litigation” steps in the approval and appeals process to permit newly approved drugs to enter the market sooner (Falconi). This includes an extended, predictable patent term, which balances the needs of the research pharmaceuticals with the ability of low-costs generic alternatives to be marketed in a timely fashion. It will be important to trace the impact of these approval changes and patent extensions on drug prices and availability of generics, which some critics fear could stress Canada’s already fraught public health care systems. Analysis of the IP provisions more

broadly reveals that they will have few positive effects on innovation. But CETA creates potential opportunities for open science collaborations which could help Canada and Europe escape some of the strictures of the US model of intellectual property rights, which increases the power of multinationals and imposes costs on smaller states. Open science collaboration as indicated in CETA Chapter 25 could spur an alternative model innovation, which can help redress some of this costly technological dependence (Gold).

Finally, CETA contains ambitious goals for *regulatory cooperation*, through a gradual process involving development of the institutions to implement mutual recognition of regulatory practices. CETA is joining a plethora of initiatives aimed at regulatory integration and harmonization at the level of the World Trade Organization, Comprehensive Progressive Trans Pacific Partnership and a renegotiated North American Free Trade Agreement, which if ratified will be replaced by the Canada-US-Mexico Agreement (CUSMA). In general, these have emphasized “least trade-restrictive” options with economic impacts assessed on a cost-benefit basis. In CETA competing approaches between the EU’s reliance on the precautionary principle, requiring anticipation of possible harm and the North American focus on scientifically demonstrated evidence of harm will complicate the process of harmonization of regulatory restrictions. CETA’s Regulatory Cooperation Forum, which held its first meeting in December 2018, will work towards mutual recognition of these differing approaches, and the key will be whether it will be dominated by corporate interests to the exclusion of non-governmental organizations (NGOs) as has happened in the NAFTA context (Trew). This implementation of regulatory collaboration will determine how meaningful the “right to regulate”, enshrined in the joint interpretive instrument attached to CETA, will be in practice. On paper it seems expansive, covering “the protection and promotion of public health, social services, public education, safety, the environment, public morals, social or consumer protection, privacy and data protection and the promotion and protection of cultural diversity” (JII). But it remains to be seen how enforceable these commitments will be, and this will determine ultimately the social impact and degree of progressivity in the CETA over time.

Table 4: CETA Governance and committees

Committee	Meeting Date	Location
CETA Joint Committee	September 26, 2018	Montreal
Agriculture	September 19, 2018	Brussels
Financial Services	June 12, 2019	Ottawa
	June 19, 2018	Brussels
Geographical Indicators	May 17, 2018	by videoconference
Goods	November 29, 2018	by videoconference
Government Procurement	February 22, 2019	Brussels
	March 15, 2018	Brussels
Joint Customs Cooperation	June 22, 2018	Brussels
Pharmaceuticals	November 16, 2018	by videoconference
Professional Qualifications	April 16, 2019	Brussels
Regulatory Cooperation Forum	December 14, 2018	Brussels
Sanitary and Phytosanitary	February 25-27, 2019	Brussels
	March 26-27, 2018	Ottawa
Services and Investment	September 18, 2018	Brussels
Trade and Sustainable Devel.	September 13, 2018	Brussels
Civil Society Forum	September 12, 2018	Brussels
Wines and Spirits:	July 5, 2018	Brussels

Many elements of CETA’s implementation involve creating new organizations and communications channels to put the agreement into practice over several years. (Table 4) The overarching structure is coordinated by the Canada-EU Joint Committee, which involves the trade minister and commissioner, and senior officials, to coordinate key priorities and oversee the development of specialized bilateral dialogues and committees specific to various chapters of CETA. At its initial meetings, the Joint Committee indicated priorities for action - on gender responsive trade policy, trade impacts on climate in light of Paris Accord commitments, and challenges facing Small and Medium Enterprises (SMEs) in the complex, competitive, post-CETA markets. The joint committee also oversaw the initiation of bilateral dialogues on specific themes including forest products certification, sustainability, and bioenergy; motor vehicle emission and safety standards and automation; biotechnology and controls and labelling genetically modified meat and salmon; raw materials issues including critical resources, minerals and metals, and sustainable technology and practices; and electronic commerce, which has yet to convene).

The degree of implementation and extent of activities of the chapter-specific joint committees remains uneven, though some are making substantial progress. For instance the Regulatory Cooperation forum identified priority areas for collaboration, including cybersecurity and the emerging internet of things, pharmaceutical inspections, “cosmetic like” drugs and animal welfare and transport; the forum also began the task of exchanging information between the two consumer protection systems, the EU RAPEX alert system and RADAR, Canada’s consumer product incident reporting system, to ensure clearer

understandings on the health and safety of products in the more open marketplace of CETA. The Financial Services Committee shared information on a wide range of contemporary issues, including new financial technologies, open banking, electronic payments, consumer protection, financial stability, stress testing of financial institutions, consumer debt loads, sustainable finance and capital markets. The procurement committee discussed creation of a single point of access for Canada's public procurement, to match the existing centralized system; the parties also consider promotional efforts, statistical and information sharing. The Geographic Indicators committee addressed EU requests for a clearer list of Canadian firms entitled to use GI protected labelling based on grandfathered existing practices (which Canada suggested CETA did not require); and information was exchanged on Canada's use of a trademark model to protect GIs in wines and spirits and the potential to add more GIs in future. The Agricultural subcommittee addressed ongoing concerns with ongoing access to quotas for EU cheese with low quota uptake attributed to Canada's approach of allocating half of the quota to Canadian cheese manufacturers; and Canadian concerns respecting meats, complete with requests for information sharing on data and clarification of procedures which involved EU level aggregation of quota requests to member states, which delayed actual access to markets.

Many of the other sub committees are established and active and working through particular issues of this nature. But some of these issues involved political decisions that were the purview of the ministerial level and the Canada-EU Joint Committee, which takes the lead on the most sensitive and contentious matters. As Table 5 below indicates, many different agencies at multiple levels of governance will ultimately be involved in the implementation process, making this a complex and protracted process. The agenda for researchers will remain multifaceted, covering the complex range of subjects addressed in this comprehensive transatlantic accord.⁴

⁴ Researchers associated with the CIPP project will be providing insights on implementation progress at a conference in late September 2019. <https://ciipdal.ca/call-for-papers/>

Table 5: Sample Implementation tasks

Actor	Sample Themes	Sample Implementation Actions
Canada-EU Joint Committee	gender, climate, SMEs and others TBA	identify priorities; discuss politically contentious areas (e.g. cheese, wines and spirits, meat TRQ etc.)
Specialized Committees	one for each chapter of the CETA agreement	information sharing; exchanges on regulatory developments and policy priorities
Bilateral Dialogues	motor vehicles, biotech, raw materials, electronic commerce, market access	information sharing; standards setting; implementation guidance
EU Commission	ALL except indirect investment, investment disputes, marine transport, labour relations	implementing directives; ECJ referrals; creation of consultative bodies
Federal Government	patent extensions, tariff reductions, agricultural quotas; generating new institutions	tariff notices; legislation or regulation; creation of consultative committees; civil society outreach; trade promotion
Member States	investment court participation; other mixed competences	ratification in parliament and sub-national levels
Provinces	labour mobility; labour relations; procurement	legislation or regulation; links to immigration and skills development policies
Municipal/Local	procurement	adjusting tenders; preparing coordinated databases
Professional Associations	professional qualifications	negotiated mutual recognition
Civil society groups	sustainability, labour, environment	participation in committees, consultations, lobbying
Business/Corporate	regulation, procurement, investments, marketing	cooperation on “behind-the-border” elements of integration

Conclusion

CETA was born in liberalizing times of crisis but adjusted in response to the social push back that occurred, especially after the failed TTIP negotiations. CETA is hailed as an example of social sensitivity by the EU and Canada in an era when populist alternatives are challenging the liberal international order. Canada has also joined the EU in the depiction of CETA as the most progressive trade agreement adopted to date, with the right of government to regulate for health, environment and safety guaranteed in the JII; and with integrated chapters on trade and sustainability, labour, environment and human rights. CETA's eventual impacts, and the opportunities and challenges these will produce, remain untested and will be an important field for analysis for some time to come. Significant elements of the agreement, notably the innovative investment court system, remain to be implemented pending member state assent. Critics assert that commercial interests are paramount, and liberalizing components of CETA remain pronounced. They question whether the changes made during negotiations reflect democratic responsiveness or rhetorical legitimation. Provisional implementation provides a chance to investigate and test the specific balance in CETA and observe initial impacts - though without the critical investment component, which will eventually affect how the whole CETA is put into practice. As implementation proceeds, analysts can perhaps gauge the possibilities and limitations of CETA as a model for future progressive trade deals.

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Appendix 1: CETA Workshop Presentations CETA IMPLEMENTATION: THE NEXT STEPS May 18, 2018. (Abstracts for the presentations can be found [here](#))

Wolfgang Alschner (Common Law Section, University of Ottawa) “CETA and the investment court system: Challenging times ahead”

Kerrie Blaise (Canadian Environmental Law Association) “CETA’s implications for sustainable development and environmental protection in Canada”

Cindie-Eve Bourassa (Global Affairs Canada) “Promotion of CETA to Canadians”

Adam Falconi (Magyar, Bogle & O’Hara LLP) “Predicting the effects of CETA on Canada’s pharmaceutical patent regime: An early assessment”

Francesco Maria Froidi (Centre de Recherche de Droit Public presso, Université de Montréal) “The geographical indications in the CETA treaty: A new perspective about foodstuffs”

André Gariépy (Government of Quebec) “Innovation and impact of CETA on labour mobility, qualification recognition and professional regulation”

Richard Gold (McGill University) “CETA building-blocks for Canadian-EU open science partnerships”?

Jefferson Huebner (Balsillie School of International Affairs) “Assessing the interests of business and industry in CETA”

Dmitry Lysenko (Government of Nova Scotia), Elizabeth Schwartz (Johnson-Shoyama School of public Policy, University of Saskatchewan), Saul Schwartz (School of public policy and Administration, Carleton University) “Will CETA reduce home bias in local government procurement?”

Jean-Frédéric Morin (Université Laval) “Implementing CETA’s environmental provisions: Lessons from other experiences”

Al Mussell and Douglas Hedley (Agri-Food Economic Systems) “Agri-food in CETA: Understanding the elements of policy and implementation”

Michèle Rioux and Sylvain Zini (Centre d’études sur l’intégration et la mondialisation, Université du Québec à Montréal) “CETA implementation: From innovation to uncertainties?”

Emmanuelle Santoire (Queen’s University) and Dr. Myra Hird (Queen's University) “The early effects of CETA on energy and waste issues: Socio-spatial insights across Canada”

Scott Sinclair (Canadian Centre for Policy Alternatives) “CETA’s potential impacts on public services”

Cara J Spittal (Government of Nova Scotia) “The Contribution of international labour mobility to innovation and inclusive economic growth in Nova Scotia”

Stuart Trew (Canadian Centre for Policy Alternatives) and Max Bank (LobbyControl, Germany) “Regulatory co-operation in CETA: Exporting the NAFTA model or something more?”

Lukas Vanhonnaeker (McGill University) “The CETA’s investment court system post-Achmea: Death sentence or new beginnings?”

Elizabeth Whitsitt (University of Calgary) “CETA investor-state dispute settlement: Will reform enhance legitimacy?”

David Wirth (Boston College) “Geographical indications and sustainable development: Rethinking the debate”