A Quick Guide to the
EU – Canada
Free Trade agreement
On 29 February 2016, the European Commission and Canada announced the end of the legal review of the original (English) version of this text. This legally reviewed text was made public the same day on the website of DG Trade. It will subsequently be translated into the other official languages of the EU and Canada before being submitted to the Council and the European Parliament for approval.

The objective of CETA is to increase bilateral trade and investment flows and contribute to growth in times of economic uncertainty. This is in line with the Europe 2020 strategy to boost growth through external competitiveness and the participation in open and fair markets worldwide. To this end, the EU and Canada achieved the ambitious agreement they wanted, opening up new trade and investment opportunities for economic actors on both sides of the Atlantic. Both sides have also underlined the importance that economic activity takes place within a framework of clear and transparent regulation by public authorities, and that they consider the right to regulate in the public interest within their territories as a basic underlying principle of the Agreement. The EU and Canada are resolved to preserve their ability to achieve legitimate policy objectives, such as public health, safety, environment, public morals and the promotion and protection of cultural diversity.

The main final negotiating results are the following:
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Trade in Goods - Industrial tariffs:

100% of the tariff lines on industrial products for both sides will be fully eliminated, of which 99.6% upon entry into force in the case of Canada and 99.4% upon entry into force in the case of the EU. Amongst the few products not liberalised at entry into force are a limited number of automotive products, which will be liberalised on a reciprocal basis over 3, 5 or 7 years (17 products in the Canadian tariff offer and the corresponding products in the EU offer). In addition, Canada will dismantle its tariffs on ships over 7 years (the most favourable commitment that Canada has ever made for ships to a trading partner).

Based on 2009-2011 data, once fully implemented, EU exporters would save on average duty payments on industrial goods of €470 million annually; for Canada this figure would be €158 million.

The outcome for the EU in terms of access to the Canadian market is very significant. The clear and comprehensive listing of the reservations provides unprecedented transparency on existing measures, in particular at provincial level. Canada for the first time includes explicit provincial and territorial reservations, guaranteeing to EU service providers the benefit of the current market access, without risk of future restrictions different or additional to those listed, as well as the benefit of any future liberalisation that Canada may undertake. Canada also agreed to new liberalisation in some key sectors such as postal services, telecoms and maritime transport without transition periods. On the latter, Canada takes market access commitments on dredging and some feeding activities, which were limited to national operators under previous agreements. Through these ‘Annex I’ reservations in many sectors, EU businesses will also benefit if the measures are relaxed or eliminated vis-à-vis another Canadian trading partner in the future and they will receive automatically the same treatment.

With respect to the Investment Canada Act, which allows the Canadian government to screen acquisitions of Canadian companies by non-Canadians for “net benefit” to Canada (that is, for economic reasons rather than, as usual for all countries, only for national security reasons), Canada has agreed to increase substantially the threshold for review from the current C$354 million to C$1.5 billion (applying to all EU investors other than those that are state-owned enterprises).

As regards financial services, Canada guarantees to EU financial service providers that its existing framework will not become more restrictive with regard to the provision of crossborder insurance, reinsurance and intermediation, as well as portfolio management services.

Furthermore, Canada has taken commitments regarding its “widely held” regime so that EU investors can continue to control their investments in financial institutions in Canada, reflecting and guaranteeing the continuation of existing Canadian practice. The EU guarantees to Canadian service providers its current level of liberalisation in many sectors through Annex I reservations. Canada benefits, in particular, from commitments in areas like mining, certain services related to energy, environmental services and certain professional services. For critical and sensitive areas or sectors, however, CETA safeguards the ability of the EU and Member States to introduce discriminatory measures or quantitative restrictions in the future by specifying these areas or sectors in the reservations of Annex II.

This flexibility concerns, among others, public monopolies and exclusive rights for public utilities that the EU and its Member States will be able to operate at all levels of government, including the local level. Public utilities cover a wide range of sectors, such as, for example waste management or public transport. The flexibility provided by Annex II reservations also concerns public services such as education, health, social services and water supply. CETA contains no obligation to privatise any of these sectors. Beyond that, CETA explicitly allows a government in a Member State to reverse in the future at any time any autonomous decision it may have taken to privatise these sectors.
Movement of personnel

Temporary movement of company personnel – to support trade in services and investment, CETA will make it easier for firms to move staff temporarily between the EU and Canada. This will make it easier for European companies to run their operations in Canada. Certain categories of professionals will also have easier access to temporarily supply services such as consultancy in a variety of sectors like engineering, accounting or architecture, simplifying the fulfillment of after-sales maintenance and monitoring commitments.

Investment – one of the key pillars of economic relations between the EU and Canada, with combined EU and Canadian FDI stocks amounting to €360 billion in 2011.

The investment relationship is equally highly important. In 2013, European investors held investments worth €225.2 bn in Canada while Canadian direct investment stocks in the EU amounted to almost €117.0 bn.

The agreement will remove or alleviate barriers to investment both horizontally and in specific sectors, improving legal certainty and predictability for businesses. As a result of the changes made by the Lisbon Treaty regarding EU competence on investment, the Commission has negotiated provisions to protect European investors in Canada, ensuring non-discrimination, a fair and equitable treatment and appropriate compensation in the event of expropriation. This is in line with EU Member States best practices in their existing Bilateral Investment Treaties (BITs). At the same time, the investment protection provisions fully preserve the right of the parties to regulate and implement their public policy objectives. Underpinning the investment protection obligations will be a modern and effective investor-to-state dispute settlement mechanism.

Investment protection and investment dispute settlement

CETA includes all the innovations of the EU's new approach on investment and its dispute settlement mechanism, thus meeting the expectations of stakeholders for a fairer, more transparent and institutionalised system for the settlement of investment disputes. It introduces important innovations in this field, ensuring a high level of protection for investors, while fully preserving the right of governments to regulate and pursue legitimate public policy objectives such as the protection of health, safety, or the environment. CETA represents a significant break with the traditional approach to investment protection and settlement of investment disputes in most of the existing bilateral investment treaties worldwide. It removes ambiguities that made the old system open to abuses or excessive interpretations and creates an independent investment court system, consisting of a permanent tribunal and an appeal tribunal that will conduct dispute settlement proceedings in a transparent and impartial manner.

First, the agreement includes a new article which confirms that the EU and Canada fully preserve their right to regulate. This gives a clear instruction to the tribunal as regards the interpretation of the investment protection rules. These rules have been also clearly defined.

For example, the rule of Fair and Equitable Treatment incorporates a closed list of the elements that could give rise to a violation. The objective of this innovation is to avoid wide or abusive interpretations and give clear guidance to tribunals. CETA also incorporates an Annex on Indirect Expropriation that defines what situations constitute an indirect expropriation.
This ensures that a measure by a public entity will only be considered equivalent to expropriation when its effect on the property of an investor is essentially the same as that of a direct expropriation measure (which remains per se lawful, provided it is in the public interest and accompanied by adequate compensation, as it is the case under domestic law everywhere in the EU). In particular, non-discriminatory measures of general application taken for legitimate public objectives, for example in the areas of labour, health or environment, cannot be considered equivalent to expropriation, unless they are so manifestly excessive in light of their objective that they take away the investor’s property (in which case the measures can still be taken, against adequate compensation). It is important to note that all investors in the EU already enjoy the same or higher guarantees under EU law and the laws of the Member States. In this respect, CETA provides basic guarantees to Canadian investors in the EU, but not a higher level of protection. It obtains equivalent guarantees for EU investors in Canada.

Second, the investment chapter incorporates all the essential elements of the EU’s new approach on investment dispute settlement. In particular, under CETA, cases will be heard by a permanent tribunal, with members of the tribunal no longer being appointed ad hoc by the investor and the state involved in a dispute but in advance by the Parties to the agreement – the EU and Canada. CETA also creates an appeal system comparable to what is found in domestic legal systems, meaning that decisions of the tribunal will be checked and reversed in case of a legal error.

Raw Materials - Article 25.1

Objectives and principles

1. Building upon their well-established partnership and shared values, the Parties agree to facilitate cooperation on issues of common interest, including through:

(a) strengthening bilateral cooperation on biotechnology through the Dialogue on Biotech Market Access Issues;

(b) fostering and facilitating bilateral dialogue and exchange of information on issues related to trade in forest products through the Bilateral Dialogue on Forest Products;

(c) endeavour to establish and maintain effective cooperation on raw materials issues through the Bilateral Dialogue on Raw Materials; and

(d) encouraging enhanced cooperation on science, technology, research and innovation issues.

For further details read at http://ec.europa.eu/trade/policy/in-focus/ceta/

EU call for a Feasibility Study for an EU-Canada mineral investment facility - Location: Canada and the European Union

The general objective of this action is to support the European Union’s Raw Materials Initiative objective of guaranteeing access to a secure and sustainable supply of raw materials for the EU industry. A feasibility study, which will encompass associated events and stakeholder dialogue, should analyse the current state of play of cooperation between the EU and Canada on the mining sector and related technology and services and conclude how to improve in a structured manner this cooperation and whether this could be achieved through the subsequent establishment of a mineral investment facility (MIF) between the EU and Canada. The study should examine all options within the context of the EU-Canada relationship in the field of raw materials, and make proposal on the best design of the MIF.

The deadline for the call was 15 March 2016, the contract should be awarded soon.
Euromines

Euromines is the recognized representative of the European metals and minerals mining industry. The members’ main objective is to promote the industry and maintain their relations with European institutions at all levels. Euromines provides services to its members with regard to EU policy and forms a network for cooperation and the exchange of information throughout the sector within Europe. The association also supports contacts with the mining community throughout the world.

Euromines members are large and small companies who with their subsidiaries in Europe and in other parts of the world provide jobs to more than 350,000 people. Their activities and operations produce more than 42 different metals and minerals.

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