

LABOUR AND SOCIAL JUSTICE

TAKING STOCK OF CETA

Early Impacts of the EU–Canada Comprehensive
Economic and Trade Agreement

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September 2019



Since CETA implementation Canada's trade deficit with the EU has increased. Research suggests that the impact of CETA on employment will be negative both for Canada and the EU.



The majority of small businesses in Canada does not export at all, and does not know where to start. More resources should be put toward trade promotion.



CETA contains no effective general exclusion for public services and thus has the potential to remove one of the last remaining tools public entities have to foster sustainable, equitable, local economic activity.

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1

CANADA–EU TRADE PATTERNS

The EU–Canada Comprehensive Economic and Trade Agreement (CETA) was provisionally applied on September 21, 2017. Most of the agreement’s provisions, including cuts to tariffs, came into force at that time. The rest of the agreement, including the controversial investment court system, will only be applied when and if all EU member states formally ratify the agreement.

Even prior to CETA implementation, average tariffs were quite low on trade between the EU and Canada. In 2014, Canada’s trade-weighted average tariff rate was 3.2 per cent, while the EU’s was 2.7 per cent.¹ Beginning in September 2017, most remaining tariffs on EU–Canada trade were removed. Tariffs on certain, more sensitive products are being phased out over seven years. By September 2024, 99 per cent of bilateral trade will be tariff free.

Between September 2017 and May 2019, two-way trade in goods between the EU and Canada increased by 18.1 per cent. But the impact on the respective trading partners has been highly uneven. To date, EU exporters have been considerably more successful in selling into the Canadian market than *vice versa*.

Between September 2017 and May 2019, total Canadian exports to the EU, measured monthly, were essentially flat. Meanwhile, over the same period, total imports from the EU increased by over a third (33.8 per cent). This imbalance has resulted in a doubling of the monthly Canadian trade deficit with the EU, from –1.51 billion dollars in September 2017 to –3.43 billion dollars in May 2019.²

In recent decades, the United Kingdom is the only major European country with which Canada has consistently run a trade surplus. But since September 2017, the Canadian merchandise trade surplus with the U.K. has shrunk significantly (falling by two-thirds), with exports declining by 32 per cent while imports rose 14 per cent. Excluding Canada–U.K. trade, the Canadian trade deficit with the EU rose from –2.99 billion dollars in September

2017 to –3.76 billion dollars in May 2019 (a 52 per cent increase).

Moreover, Canadian exports to the EU are dominated by precious metals, specifically gold. Almost all these gold exports, which were valued at 10.5 billion dollars in 2018, go to the U.K. According to a recent Canadian government analysis of the state of Canadian trade, »the strong performance of the precious metals sector hid the overall weakness in competitiveness of most Canadian sectors in the EU import market.«³

Prior to CETA’s entry into force, Canada’s trading relationship with the EU was highly imbalanced, both quantitatively and qualitatively. To date, there is little indication that CETA is reversing these trends, as the Canadian government and business proponents of CETA hoped. In fact, the composition of Canadian exports to the EU underlines Canada’s continuing reliance on the export of raw or semi-processed products. In 2018, the first full year of CETA provisional implementation, 18 of Canada’s top 25 exports to the EU were raw or semi-processed products. These products accounted for 77.2 per cent of the value of the top 25 exports to the EU. In sharp contrast, only one of Canada’s top 25 imports from the EU (petroleum) was a primary product (see Table 2); the rest consisted of manufactured, highly processed and higher-value-added products.

There are various reasons why such reliance on raw or barely processed resources may be harmful for the long-run success of the Canadian economy and the health of the planet. The volatility of commodity prices is well-known and commodity prices tend to decline relative to manufacturing goods over the long term.⁴ Meanwhile the environmental and climate impacts of increasing the production and trade of fossil fuels (crude petroleum and coal) and minerals (gold, iron ore, aluminum) are unacceptable.

The bilateral trading pattern since CETA implementation is generally consistent with what many labour and civil society analysts had predicted while CETA was being debated. Can-

1 European Commission’s Directorate–General for Trade, »The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)«, 2017, p. 11.

2 All dollar values in this report are in Canadian dollars unless otherwise noted.

3 Global Affairs Canada, »Canada’s State of Trade: Trade and Investment Update – 2018,« p. 117.

4 United Nations Conference on Trade and Development, »Commodity Dependence: A Twenty-Year Perspective,« 2019, <https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2440>.

Table 1
Top 25 Canadian Exports to EU (HS4), 2018

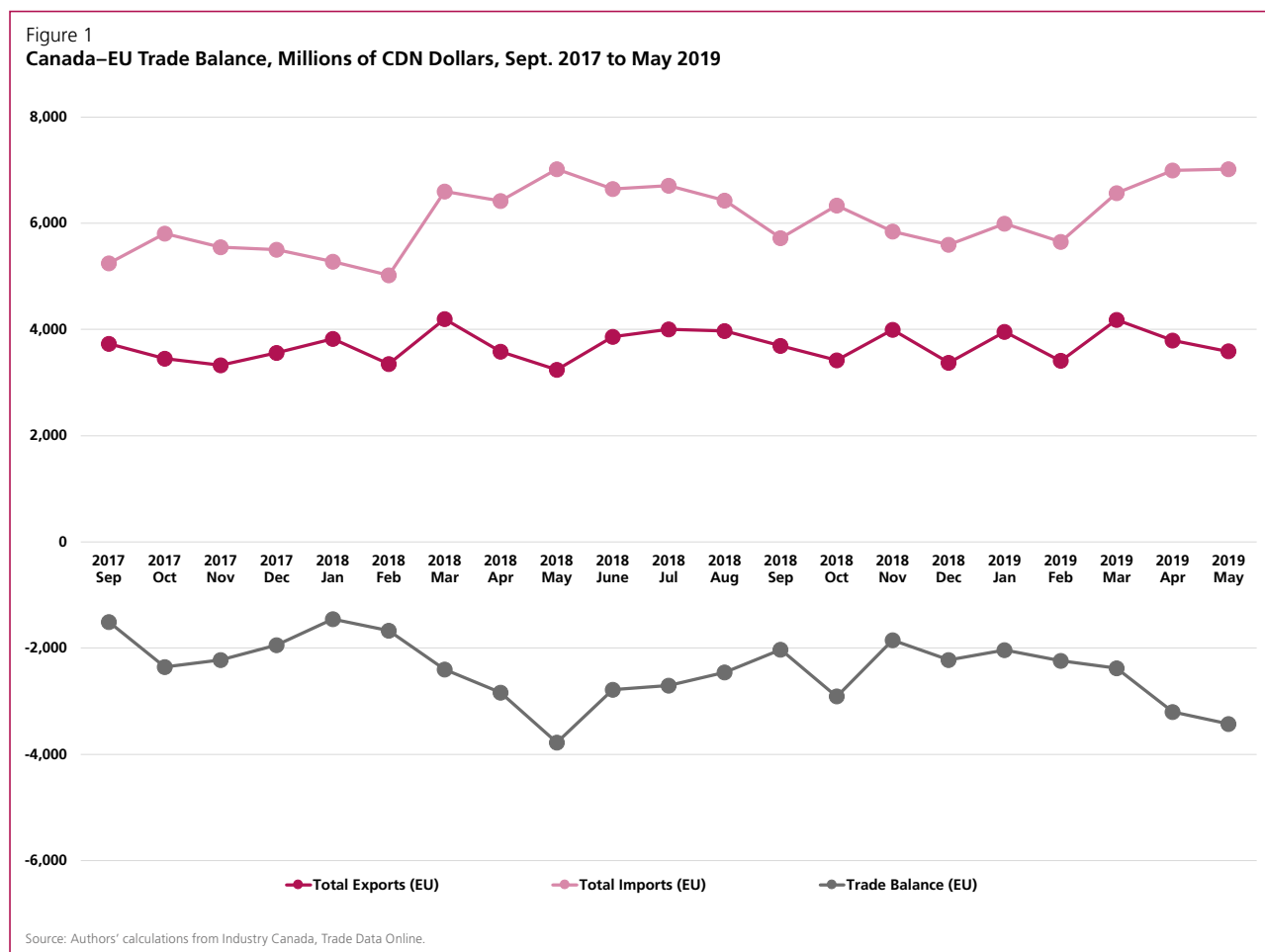
Product Code and Description	Value (billions of Canadian dollars)
7108 – Gold	10.5
2709 – Crude Petroleum Oils and Oils Obtained from Bituminous Minerals	2.7
2601 – Iron Ores and Concentrates	2.4
8802 – Helicopters, Airplanes and Spacecraft	1.9
8411 – Turbo-Jets, Turbo-Propellers and Other Gas Turbines	1.8
3004 – Medicaments – Put Up in Measured Doses or Packed For Retail Use	1.6
7102 – Diamonds	1.3
2710 – Preparations Of/Non-Crude Petroleum Oils and Oils Obtained from Bituminous Minerals	1.1
2701 – Coal and Solid Fuels Manufactured from Coal	0.9
8703 – Motor Vehicles For Passenger Transport (Other than Buses/Public Transport)	0.8
8803 – Parts of Helicopters, Airplanes, Balloons, Dirigibles and Spacecraft	0.7
7601 – Unwrought Aluminum	0.7
7502 – Unwrought Nickel	0.6
2844 – Uranium and Other Radioactive Elements, Isotopes, Residues and Compounds	0.6
2603 – Copper Ores and Concentrates	0.6
1005 – Maize (Corn) Seed (Excluding Sweet Corn)	0.4
1001 – Wheat	0.4
4401 – Fuel Wood; Wood in Chips or Particles; Sawdust, Shavings, Wood Waste and Scrap	0.3
0713 – Leguminous Vegetables – Dried and Shelled	0.3
0306 – Crustaceans – Whether in Shell or Not, Live Fresh, Chilled Frozen Dried Salted or in Brine; Smoked	0.3
7112 – Waste and Scrap of Precious Metals	0.3
8805 – Flight Simulators, Aircraft Launching Gear, Deck Arrestors and Similar Gear	0.3
2620 – Ash and Residues Containing Metals or Metallic Compounds	0.3
7501 – Nickel Mattes; Nickel Oxide Sinters and Other Intermediate Products of Nickel Metallurgy	0.3
1201 – Soya Beans, Whether or Not Broken	0.2
Sub-total	31.3
Number of primary products	18
Share of top 25 total value	77.2%
Others	13.2
Total (All Products)	44.5

Source: Authors' calculations from Industry Canada, Trade Data Online.

Table 2
Top 25 Canadian Imports from EU (HS4), 2018

Product Code and Description	Value (billions of Canadian dollars)
8703 - Motor Vehicles For Passenger Transport (Other than Buses/Public Transport)	6.8
3004 - Medicaments - Put Up in Measured Doses or Packed For Retail Use	5.0
2710 - Preparations Of/Non-Crude Petroleum Oils and Oils Obtained from Bituminous Minerals	4.2
8411 - Turbo-Jets, Turbo-Propellers and Other Gas Turbines	2.3
3002 - Human Blood and Animal Blood Preparations Etc, Vaccines, Toxins, Cultures	1.9
8803 - Parts of Helicopters, Airplanes, Balloons, Dirigibles and Spacecraft	1.6
2204 - Grape Wines (Non Aromatic) and Grape Must	1.4
2937 - Hormones and their Derivatives (Incl Steroids Used Primarily As Hormones)	1.1
8708 - Motor Vehicle Parts (Excl. Body, Chassis and Engines)	1.0
8431 - Parts Suitable For Machinery of Headings 84.25 To 84.30	0.8
8710 - Tanks and Other Motorized Armoured Fighting Vehicles (Including Parts)	0.8
8481 - Taps, Cocks, Valves and Similar Appliances For Pipes, Boiler Shells, Tanks, Vats and The Like	0.7
8483 - Transmission Shafts and Cranks; Bearing Housings; Gears and Gearing; Flywheels and Pulleys	0.7
9018 - Instruments and Appliances Used in Medical, Surgical or Veterinary Sciences	0.7
8704 - Trucks and Other Vehicles For The Transport of Goods	0.7
9403 - Furniture - Other than For Medical, Surgical or Dental Use	0.6
2208 - Spirits, Liqueurs and Other Spirituous Beverages or Alcoholic Preparations	0.6
2935 - Sulphonamides	0.6
3304 - Beauty or Make-Up Preparations	0.6
8429 - Self-Propelled Bulldozers, Scrapers, Graders, Levelers, Shovel Loaders, Taping Machines	0.5
8413 - Pumps For Liquids; Liquid Elevators	0.5
8802 - Helicopters, Airplanes and Spacecraft	0.5
8433 - Harvesting, Threshing and Other Agricultural and Mowing Machinery	0.5
8701 - Tractors	0.5
8479 - Machines and Mechanical Appliances Having Individual Functions, Nes	0.5
Sub-total	35.2
Number of primary products	1
Share of top 25 total value	12.0%
Others	38.4
Total (All Products)	73.6

Source: Authors' calculations from Industry Canada, Trade Data Online.



Canada's trade deficit with the EU has increased. This reflects the fact that Canada's trade-weighted average tariffs (3.2 per cent), although low, were higher than the comparable EU tariff rates (2.7 per cent).⁵ Moreover, Canada continues to depend on the production and export of unprocessed or barely processed non-renewable resources to the EU, while importing mainly higher value-added, sophisticated manufactured goods from the EU. This qualitative imbalance in the bilateral trade relationship points to underlying structural problems in the Canadian economy that have only deepened since CETA was implemented.

While estimating the effect of growing trade imbalances on employment is beyond the scope of this briefing note, previous research suggests the impact of CETA will be negative in this respect for Canada. A 2010 study by Canadian economist Jim Stanford, for example, estimated that complete tariff elimination under CETA would add 8.5 billion dollars to Canada's existing bilateral goods trade deficit with the EU, leading to the loss of 28,000 Canadian jobs.⁶ Based on sector-by-sector employment intensity ratios, Stanford calculated the most negatively affected sectors in terms of employ-

ment would be processed foods, wearing apparel, automotive products and chemical products, sectors that tend to have higher-than-average union density.⁷ Meanwhile, among the biggest winners from CETA, Stanford found, would be agriculture and fisheries, where union density is lower.⁸ While it is too early to draw firm conclusions, the rapid deterioration of the Canadian trade balance since the provisional implementation of CETA suggests Stanford's estimates are a reasonable, first-order approximation of the negative job impacts in Canada from tariff elimination under the agreement.

A second study of CETA impacts, by Pierre Kohler and Servaas Storm, employs a different methodology but arrives at a similar estimate of job losses in Canada. Like Stanford, Kohler and Storm are highly critical of the assumptions underlying the computable general equilibrium (CGE) models typically used by CETA advocates.⁹ Their alternative assessment, using

⁵ European Commission's Directorate-General for Trade, »The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)«, 2017.

⁶ Jim Stanford, »Out of Equilibrium: The Impact of EU-Canada Free Trade on the Real Economy,« Canadian Centre for Policy Alternatives, October 2010.

⁷ Statistics Canada, »Union Status by Industry,« <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410013201>.

⁸ To date, the Canadian agri-food industry, which was a key proponent of CETA, has been slow to take advantage of new export opportunities in Europe. Alex Binkley, »European trade deal hasn't been a breakthrough for Canadian agri-food,« National Newswatch, April 29, 2019. <https://www.nationalnewswatch.com/2019/04/29/european-trade-deal-hasnt-been-a-breakthrough-for-canadian-agri-food/>.

⁹ Pierre Kohler and Servaas Storm, »CETA Without Blinders: How Cutting Trade Costs and More Will Cause Unemployment, Inequality and Welfare Losses,« Global Development and Environment Institute Working Paper No. 16-03, Tufts University, October 2016.

the United Nations Global Policy Model, relaxes the standard yet unrealistic assumptions of CGE models: the presence of full employment before and after an agreement is implemented, neutral income distribution within all countries, »dynamic gains« from the reduction of unspecified »non-tariff barriers,« and highly speculative estimates of the gains from liberalizing trade in services. Kohler and Storm conclude that »competitive pressures induced by CETA will cause unemployment, inequality and welfare losses,« leading to an estimated 23,000 job losses in Canada over the next seven years and 200,000 job losses in the EU, as well as a fall in labour's share of income within both parties.

2

SMALL AND MEDIUM-SIZED ENTERPRISES

In Canada, small and medium-sized enterprises (SMEs) are defined as businesses employing between 1 and 499 employees. The category is usually split into »small« businesses employing up to 99 people, and »medium-sized« businesses employing anywhere from 100 to 499 people, but government statistics can be further sorted into firms employing 1–9, 10–49, 50–99, and 100–249 people. This is similar to how the OECD and European Union categorize employment sizes, though in the EU all firms above 250 employees are considered large enterprises where in Canada a firm must employ more than 500 people to be considered large. Statistics Canada estimates that, of the 1.18 million employer businesses in Canada as of December 2017, 1.15 million (97.9 per cent) were »small« businesses, 21,926 (1.9 per cent) counted as medium-sized, and 2,939 (0.2 per cent) were large businesses employing more than 500 people.¹⁰

The way Canada categorizes SMEs—by individual establishment size rather than the size of the owning firm—impedes analysis of the relative contribution of SMEs to employment and economic growth. For example, Canadian bank branches and franchises of major retailers are considered separate entities and counted as SMEs.¹¹ Furthermore, the difference between Canadian and EU/OECD statistics with respect to SME firm sizes makes international comparisons somewhat more challenging. Despite these methodological flaws in Canada, the government's SME data is consistent and up-to-date enough that we can provisionally estimate the impact of CETA on Canadian SME exports to the EU, at least to the end of 2018. Current European data on SME exports stops at 2017, making it difficult to assess the effect of CETA on EU-based SME exports to Canada.

Figure 2 shows the value of Canadian exports by SMEs and all firm sizes (based on the EU/OECD classification of SME) to EU countries alongside the SME share of total Canadian exports for each year from 2010 to 2018. As we can see, there is no noticeable boost from the announced signing of CETA in 2016 or its coming into force a year later. In fact, the share of Canadian SME exports going to Europe actually

dropped in 2017 and again, by the same margin, in 2018. This drop was not a result of declining SME exports to EU countries but of steady growth in overall Canadian exports by SMEs to other countries, calling into question the value of tariff elimination under CETA for these smaller firms.

Consistently, more than half of Canadian SME exports to Europe go to the United Kingdom and will eventually cease to be covered by CETA should the U.K. leave the EU as expected later this year. SME exports make up a relatively high proportion of total Canadian exports to the U.K., peaking above 74 per cent in 2016. This is almost certainly due to the dominance of gold in Canada's exports to the U.K., since nearly 90 per cent of business establishments involved in the Canadian gold and silver ore mining sector are considered micro (32.4 per cent), small (46.3 per cent) or medium-sized (12.0 per cent) in government statistics.¹² Canadian gold exports to the U.K. increased substantially following the 2007-08 financial crisis, as global investors sought a safe refuge against equities market volatility.¹³

SMES LACK KNOWLEDGE OF CETA

How should we make sense of the lackluster Canadian SME performance in EU exports? The optimistic take is that Canadian SMEs simply don't have all the information they need to make use of what CETA has to offer. According to a 2019 federal government survey of small and medium-sized Canadian exporting companies, only 7 per cent knew the details of CETA and fewer than three-quarters had even heard of the agreement. Of the 507 SMEs to answer the government questionnaire and 40 who participated in »in depth« telephone interviews, only 17 per cent said they planned on using CETA, at some point, to expand their business into Europe.¹⁴

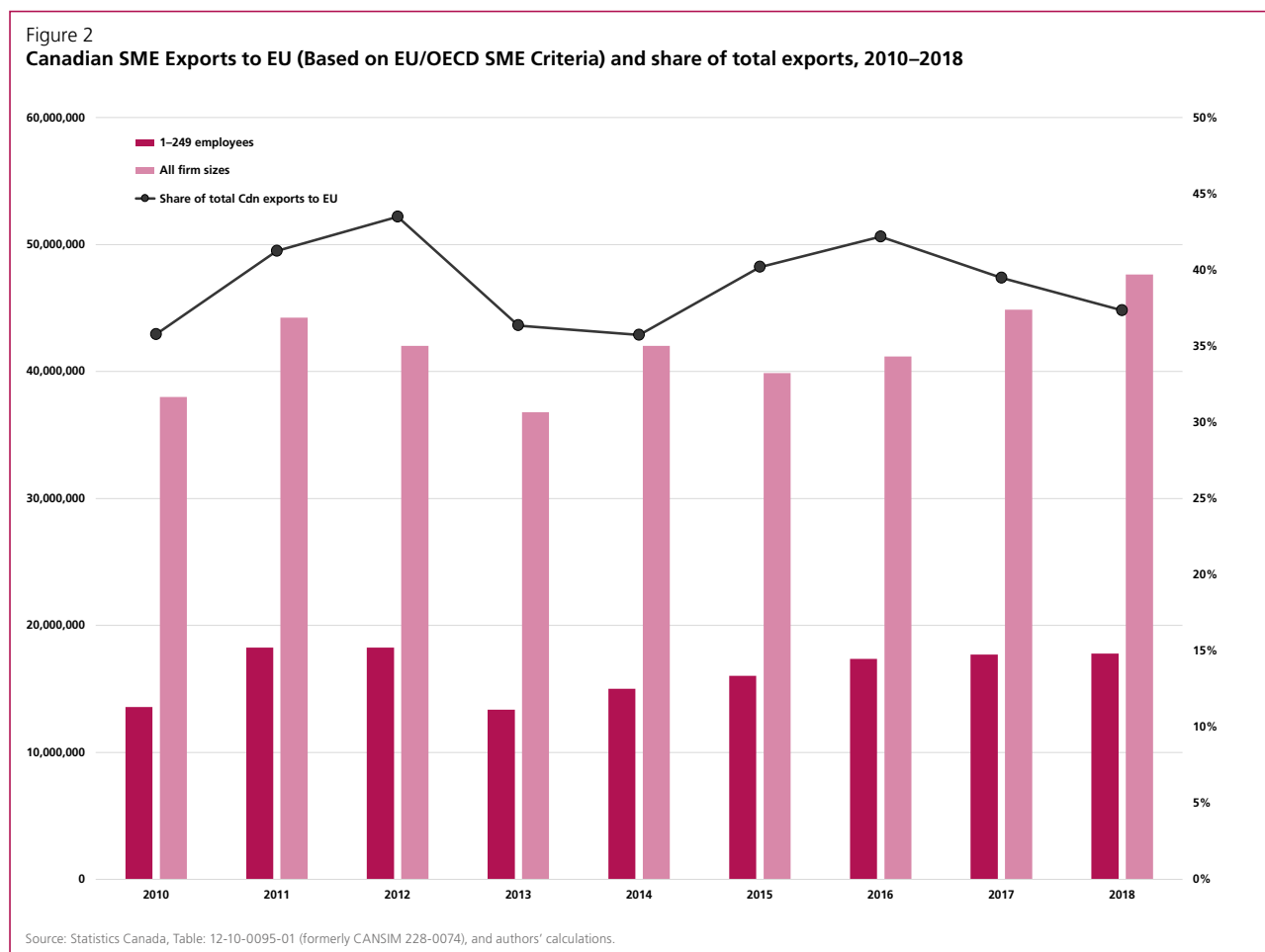
¹⁰ Government of Canada, Innovation, Science and Economic Development Canada, »Key Small Business Statistics: January 2019,« p. 3. Accessed July 25, 2019: http://www.ic.gc.ca/eic/site/061.nsf/eng/h_03090.html.

¹¹ Allan Lanthier, »Canada's small-business tax rate should be repealed,« *Globe and Mail*, July 23, 2019.

¹² Government of Canada, Industry Canada, Canadian Industry Statistics, Employer establishments by employment size category and province/territory (2016).« Accessed July 31, 2019: <https://www.ic.gc.ca/app/scr/app/cis/businesses-entreprises/21222>.

¹³ Alex Ballingall, »The British are coming—for our gold,« *Maclean's*, April 26, 2012. Accessed July 31, 2019: <https://www.macleans.ca/economy/business/the-british-are-coming-for-our-gold/>.

¹⁴ Mary Clare Jalonick, »Just 7% of Canadian exporters familiar with CETA as Trudeau pushes trade diversity: survey,« *The Canadian Press*, July 19, 2019.



It is more likely that SME export performance is a product of structural and geographical realities that CETA cannot realistically change. Despite the federal government's assertion that SMEs »form the backbone of the Canadian economy and are integral to economic prosperity across the country,«¹⁵ only 12 per cent of SMEs exported goods in 2017. As in most developed countries, SMEs dominate the service-producing sectors in Canada (wholesale and retail trade; professional and technical services; educational, health and accommodation services, etc.). SMEs are less prevalent in the goods-producing sector outside of construction, some mining, and agriculture. In the more export-intensive manufacturing sector, small businesses (1–99 employees) make up only a quarter of all enterprises.

In the manufacturing sector, which accounts for 57 per cent of the value of all Canadian exports, large companies were responsible for nearly two-thirds (61.2 per cent) of the value of exports in 2017, while companies employing fewer than 99 people (categorized as »small« businesses) contributed only 12.4 per cent to the value of manufacturing exports.¹⁶ In mining, quarrying, and oil and gas exploration—another impor-

tant export sector in Canada—the SME share of the value of exports goes up slightly, to 47.9 per cent, with small firms picking up 16.6 per cent. These figures are similar to what you would find in any developed country, where the bulk of international trade is carried on by, and frequently within, large firms.¹⁷

When Canadian SMEs do venture into international markets, for obvious reasons of proximity and familiarity they concentrate on exporting to the United States. In fact, the SME share of total Canadian exports to the U.S. is up from 36.7 per cent in 2010 to 41.4 per cent in 2017.¹⁸ As the recent government survey of SME exporters shows, one-third of Canadian small and medium-sized companies have no interest in other markets, and those that do hope to expand globally are more likely to cite the value of the Canadian dollar as a big obstacle (for 69 per cent of companies polled it was at least a minor obstacle to international expansion).¹⁹

¹⁵ Government of Canada, Global Affairs Canada, »Canada-European Union trade agreement benefits for small and medium-sized enterprises.« Accessed July 25, 2019: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/benefits-enterprises-avantages.aspx?lang=eng>.

¹⁶ Ibid., p. 20.

¹⁷ OECD, Exports by business size. Accessed July 25, 2019: <https://data.oecd.org/trade/exports-by-business-size.htm>. The OECD includes all firms employing 250 or more people as large businesses.

¹⁸ Government of Canada, Innovation, Sciences and Economic Development Canada, »Key Small Business Statistics: January 2019,« p. 21.

¹⁹ Government of Canada, Global Affairs Canada, »Encouraging Export Diversification for Canadian Small and Medium-sized Businesses: Quantitative and Qualitative Research on Free Trade Agreements,« June 2019, p. 3. Accessed July 26, 2019: http://publications.gc.ca/collections/collection_2019/amc-gac/FR5-159-2019-1-eng.pdf.

According to a government summary of the survey results:

In particular, for smaller firms, and companies that recently started international activities, making connections and networking as well as financial assistance were described as important challenges—the former because it is important to have knowledgeable ›people on the ground‹ to facilitate entry into a foreign market, and the latter because smaller firms many not have the cash flow available to support international business opportunities.

SMEs have little interest in battling it out for access to increasingly globalized value chains; when they do, the barriers to success are most-often not related to tariffs and cannot be overcome by agreements such as CETA. In fact, CETA disciplines in the areas of services, investment, domestic regulations and procurement constrain and in cases eliminate policy options governments would otherwise have to support the growth and success of SMEs domestically, which is a key factor in international success.

SMES NEED AN INDUSTRIAL STRATEGY

As a recent report of the federal government's Advisory Council on Economic Growth pointed out, »The majority of small businesses in Canada do not export at all, and do not know where to start.«²⁰ In September 2018, around the one-year anniversary of CETA's coming into force, the CETA Joint Committee issued a recommendation for the creation of SME contact points in both jurisdictions, to take into account the needs of smaller firms with respect to Canada–EU trade and make sure websites are clear and up to date with information about CETA implementation, customs and tariff changes, etc.²¹

At the Canada–EU Summit in Montreal in July 2019, Jim Carr, minister of international trade diversification, announced that 11 new trade commissioners would be added to Canada's roster of 160 commissioner's in Europe.²² This on-the-ground expertise can be helpful to SMEs if it is accessible and well-advertised. The CCPA has long recommended that the federal government should put resources toward trade promotion and its trade commissioner services in export destinations. Trade promotion is a more immediately beneficial service to Canadian businesses than continually signing new free trade deals that few SMEs know how to navigate or would ever need to.

Domestically, Canada's SMEs in export-intensive sectors such as manufacturing would be better served by industrial strategies aimed at retaining and expanding regional production of high-value goods. Total net employment in Canadian manufacturing decreased by 32.9 per cent between 2013 and 2017, and by 19.3 per cent for small business (1–99 employees).²³ As the surveys and data above demonstrate, most

²⁰ Advisory Council on Economic Growth, »Positioning Canada as a Global Trading Hub,« February 6, 2017, p. 10. Accessed July 26, 2019: <https://www.budget.gc.ca/aceg-ccce/pdf/trade-commerce-eng.pdf>.

²¹ Government of Canada/European Commission, »Recommendation 003/2018 of 26 September 2018 of the CETA Joint Committee on Small and Medium-sized Enterprises (SMEs).« Accessed July 22, 2019: http://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157417.pdf.

²² Global Affairs Canada, »Minister Carr announces more support for Canadian businesses looking to reach European markets,« July 18, 2019. Accessed July 26, 2019: <https://www.canada.ca/en/global-affairs/news/2019/07/minister-carr-announces-more-support-for-canadian-businesses-looking-to-reach-european-markets.html>.

²³ Government of Canada, Innovation, Science and Economic Development Canada, »Key Small Business Statistics: January 2019,« p. 15.

3

GOVERNMENT PROCUREMENT

The OECD estimates that most developed countries spend the equivalent of 12 per cent of GDP on procurement each year.²⁴ During the decade-long CETA negotiations, government procurement was a top priority of the European Commission, if not *the* most important objective of EU negotiators. The EU goal, which goes back to the early days of the WTO Agreement on Government Procurement (GPA), was to have Canada »open« its domestic procurement »market«—public tenders from the federal down to the local government level—to EU-based firms, which the Commission claimed were not being treated equally to domestic firms.

The Commission clearly believes CETA will result in a higher share of Canadian public spending going to European firms over Canadian or other international competitors. In fact, federal and much sub-federal procurement in Canada was already mostly accessible to EU companies, which frequently bid on and win Canadian government contracts. Likewise, Canadian firms, particularly those established within the EU, were already free to bid on tenders issued by EU Member States prior to CETA ratification.

Both Canada and the EU are signatories to the GPA from which CETA's procedural rules governing procurement are largely derived. CETA, however, significantly expanded coverage beyond Canada's existing commitments under the GPA or NAFTA. First, it lowered monetary thresholds above which procurement must take place on CETA's terms. More importantly, it expanded covered entities to include most provincial government agencies, utilities, Crown corporations (a type of state-owned enterprise), municipalities, hospitals, school boards and other MASH sector entities.

On most public tenders above CETA's procurement thresholds, the agreement prohibits these public entities from: 1) favouring local bids, in most circumstances, over foreign competitors; 2) applying local content or hiring quotas to contracts awarded to Canadian or EU-based firms; 3) setting aside some contracts for small and medium-sized enterprises (SMEs) or minority-owned businesses, and in most cases; 4) using public purchasing as a tool for local economic development.

These and other CETA restrictions on government purchasing apply even when all bids on a contract are from Canadian-based companies. While the thresholds above which CETA rules kick in may seem high (about 236,000 dollars for federal and 362,000 dollars for sub-federal entities, and just over nine million dollars for construction contracts by federal and sub-federal entities), over 80 per cent of the value of all government purchasing will be covered.²⁵ In its December 2014 summary of the final negotiating results, the European Commission said of these procurement outcomes, »CETA achieves a very positive result, fully in line with EU interests and negotiating requests.«²⁶

CETA AND FEDERAL GOVERNMENT PROCUREMENT

The Commission's enthusiasm for CETA's procurement package aside, it is quite difficult at this point to determine whether the agreement has had—or will have—a significant impact on the national-versus-international mix of awards granted at the federal, sub-federal or local levels in Canada. One problem is lack of useful data. In CETA, Canada agreed to create a single point of access (SPA) for all Canadian tenders across the country, at all levels, including Crown corporations and the MASH sector. Under the current timeframe, this SPA will be available for all federal contracts by the end of 2020, and for all sub-federal entities by end of 2022.²⁷

But even if the full SPA were up and running today, we still would face difficulties assessing the impact of CETA on Canadian procurement decisions. First, this is because Canada's federal schedule of procurement commitments did not

²⁴ From the OECD webpage on public procurement, accessed July 28, 2019: <https://www.oecd.org/gov/public-procurement/>.

²⁵ Scott Sinclair and Stuart Trew, »Public Procurement,« in Scott Sinclair, Stuart Trew and Hadrian Mertins-Kirkwood, *Making Sense of CETA: An Analysis of the Final Text of the Canada-European Union Comprehensive Economic and Trade Agreement*, Ottawa: Canadian Centre for Policy Alternatives, September 2014, p. 26. Accessed July 28, 2019: https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/09/making_sense_of_the_ceta PROCUREMENT.pdf.

²⁶ European Commission, »CETA – Summary of the final negotiating results,« See: http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152982.pdf.

²⁷ Authors' correspondence with Global Affairs Canada officials responsible for procurement.

change substantially in CETA from the WTO GPA. An analysis of current federal data on government purchasing illustrates the issue.

Figure 3 shows the percentage of Canadian federal contracts won by firms listing their country of origin as an EU member in each of fiscal years 2014–15 through 2018–19, the last complete fiscal year for which data is available.²⁸ The total number and share of contracts won by EU firms is fairly stable over the latter part of this period.

Taking a slightly different look at these numbers, if we compare total federal contracts awarded in the 18 months prior to and after CETA implementation, we find that the number of federal contracts going to EU-based firms increased by 20 per cent in the post-CETA period compared to just 11 per cent for contracts going to firms from all other countries. The total value of contracts going to EU firms decreased by 89 per cent post-CETA, but that is entirely due to a single massive contract awarded to Airbus in 2016. If we exclude the Airbus contract, the value of EU-firm contracts is up 14 per cent from the pre- to post-CETA period.²⁹

²⁸ Data come from the Government of Canada’s »Contract History,« which includes all contracts awarded by Public Works and Government Services Canada (PWGSC) on behalf of federal departments and agencies. See: <https://open.canada.ca/data/en/dataset/53753f06-8b28-42d7-89f7-04cd014323b0>.

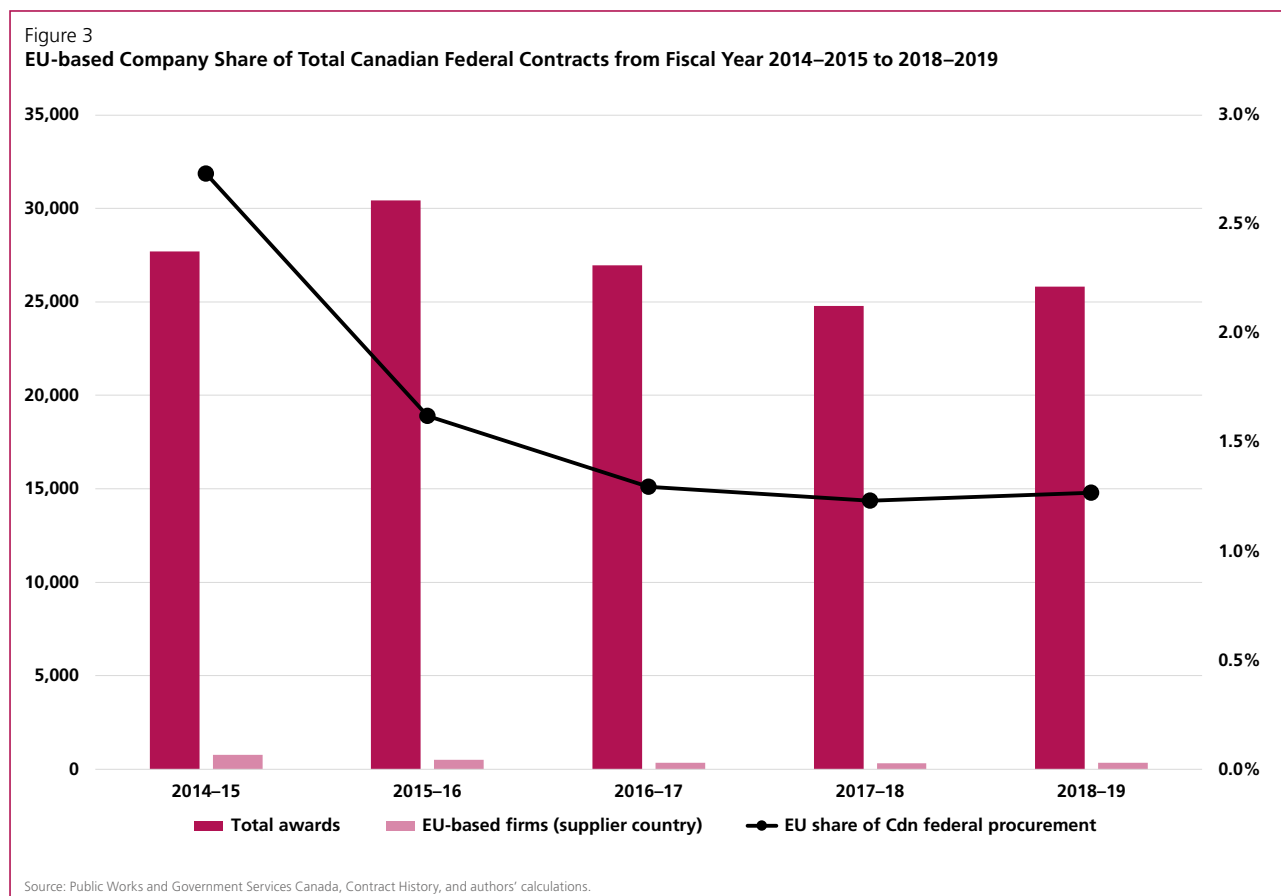
²⁹ Authors’ calculations based on Government of Canada contract history data.

CETA AND SUB-FEDERAL GOVERNMENT PROCUREMENT

Lack of data is also an issue when trying to assess the impact of CETA at the sub-federal level. A second difficulty, however, is that virtually all provincial and most MASH sector entities, including municipalities, already procure goods, services and construction projects in line with the logic of the GPA and other trade agreements. The interprovincial Canadian Free Trade Agreement, a renegotiated and rebranded version of the 1994 Agreement on Internal Trade, applies to most purchasing by nearly all public entities, for example.

EU-based firms with a local presence in Canada are covered by the CFTA and therefore enjoy the same rights as Canadian firms to dispute federal and sub-federal procurement decisions if they feel that the agreement was violated. As a result of the AIT/CFTA, Canada’s provinces and their agencies, as well as municipal governments, have already internalized the logic of »open« procurement, do not discriminate against non-Canadian bids, and rarely if ever apply offsets such as local content conditions. Preferences for Indigenous-owned businesses are more common (and are protected in CETA), but set-asides for minority-owned businesses, which were prohibited for the first time under CETA, were rarely, if ever, used in Canada.

A forthcoming study on the »short-run« effects of CETA on municipal procurement, based on a quantitative and qualitative analysis of awards in four major Canadian cities, found



no evidence of discrimination against EU firms in requests for tenders and weak indications of discrimination in requests for proposals.³⁰ However, the authors point out that CETA's prohibition on offsets (defined as any condition or undertaking that encourages local development), if »taken literally« by local governments and Crown corporations, may threaten current or future programs meant to support local communities. It is just this kind of information—the »chill« that CETA, the CFTA and other trade agreements place on sub-federal and local governments in particular—that procurement data will not be able to pick up, but which is crucial to understanding the real effects of the agreement on democratic decision-making.

Effectively, CETA has the potential to permanently and comprehensively remove one of the last remaining tools public entities have to foster sustainable, equitable, local economic activity. The prohibition on setting aside a portion of government procurement for local small and medium-sized businesses is concerning given the success of such programs internationally, and research showing how local, small-scale firms recirculate a far greater portion of earnings in the community than larger and/or multinational firms.³¹ The CETA concession is also perplexing given the federal government's recent, but CETA-incompatible, endorsement of set-asides for women-led businesses.³²

The extensive CETA restrictions on procurement are also disappointing given the scale of public spending that will be needed to fully meet the challenge of climate change and the necessary transition to a cleaner economy. A key tenet of Green New Deal proposals is that massive public spending on the transition to a zero-carbon economy can both protect the environment and stimulate local economic development. The multiplier benefits of spending in the community or region are substantial and enhance opportunities to provide a just transition for displaced workers in carbon-intensive industries, and redevelop economically disadvantaged regions.

While certain provinces took reservations to protect their ability to apply local preferences (local content and hiring quotas, for example) to hydro and public transit procurement, most, along with the federal government, did not.³³ For example, in December 2018, when Via Rail chose Germany's Siemens over Canada's Bombardier Inc. for a 989-mil-

lion-dollar contract to build more energy-efficient rolling stock for the Windsor–Quebec rail corridor, federal Transport Minister Marc Garneau claimed his hands were tied by trade agreements, including CETA.³⁴ Siemens will build the locomotives and passenger cars in its California facility. The company has pledged to provide »up to 20 per cent Canadian content in supplies and services,«³⁵ but such commitments are purely voluntary and unenforceable under the terms of CETA.

The best hope left for proponents of activist public purchasing policies is that local governments, Crown corporations and other sub-federal agencies will be able to find creative ways to skirt CETA's unreasonable ban on considering local development benefits in procurement decisions—or find the courage to ignore it.

³⁰ Dmitry Lysenko, Elizabeth Schwartz and Saul Schwartz, »The Short-Run Effects of CETA on Municipal Procurement in Canada?«, forthcoming, shared with authors.

³¹ Stacy Mitchell, »Key Studies: Why Local Matters,« Institute for Local Self-Reliance. Accessed July 31, 2019: <https://ilsr.org/key-studies-why-local-matters/#3>.

³² The Canadian Press, »Status of Women Canada pushing for procurement to support female entrepreneurs,« National Post, August 20, 2017.

³³ CETA's procurement commitments go well beyond what Canada offered in the GPA. For example, Via Rail is covered by Canada's GPA commitments (Annex 3 – Other entities). But under Annex 7 of Canada's GPA schedule – General Notes, Canada excluded »urban rail and urban transportation equipment, systems, components and materials incorporated therein as well as all project related materials of iron or steel,« as well as »procurement of transportation services that form a part of, or are incidental to, a procurement contract.«

³⁴ Canadian Press, »Via Rail places \$989M train order with Germany's Siemens instead of Bombardier,« Dec. 12, 2018. <https://www.cbc.ca/news/business/via-rail-german-siemens-bombardier-contract-1.4942956>.

³⁵ VIA Rail Inc, »VIA Rail's fleet replacement program: Siemens Canada launches procurement process,« Canada Newswire, Feb. 15, 2019. See: <https://www.newswire.ca/news-releases/via-rail-s-fleet-replacement-program-siemens-canada-launches-procurement-process-882145889.html>.

4

INTELLECTUAL PROPERTY RIGHTS AND ACCESS TO AFFORDABLE MEDICINES

On a per capita basis, Canadian drug costs are the third highest in the world after the United States and Switzerland.³⁶ This is due in large part to an intellectual property protection regime that is extremely favourable to drug patent holders and brand-name manufacturers.

While CETA did not alter the EU's intellectual property rights regime for pharmaceuticals, it required Canada to make significant changes to its patent regulations that will drive drug costs even higher. These changes will extend the period of monopoly protection for higher-cost brand-name pharmaceuticals in Canada and delay the availability of cheaper generic drugs on the market.

The most important change is that Canada was forced to adopt a system of patent term extensions that provides brand-name drug companies with up to an additional two years of market exclusivity. The Parliamentary Budget Office has estimated that, when fully implemented, this provision will cost Canadians more than half a billion dollars annually.³⁷

In implementing CETA, the Canadian government limited patent term extensions (also known as «supplementary protection certificates») to «innovative drugs,» defined as drugs that contain new medicinal ingredients or combinations. Previous studies had estimated even higher cost impacts as a result of CETA, because they assumed that the provisions would apply to all patented drugs.³⁸

The PBO warns, however, that «given the rapid evolution of the Canadian drug market, this estimate (500 million

dollars annually) is likely to understate future expenditures.»³⁹

As a result of CETA, Canada must also provide a right of appeal to brand-name drug companies in patent-linkage cases, which could delay the approval process for generic drugs by up to 18 months.⁴⁰ Canadian negotiators managed to resist EU demands that Canada extend its period of data protection to ten years, but agreed to lock in its current levels, which are high by international standards.⁴¹ Over the summer, Congressional Democrats were demanding the removal from the draft United States–Mexico–Canada Agreement (USMCA) of provisions that would require ten years of data protection for biologic drugs.

Despite claims to the contrary by brand-name manufacturers, higher drug costs are unlikely to be offset by additional research and development (R&D) expenditures. Since 2003, Canadian brand-name manufacturers have consistently failed to meet promises to invest ten per cent of their sales revenues in R&D. According to the most recent data from the Patent Medicines Prices Review Board, in 2017 the investment in R&D was only 4.1 per cent of total sales, the lowest level ever.

Provinces have demanded compensation for the fiscal impacts of these changes. Yet even if the federal government agrees to and honours such a commitment, it simply means that Canadian taxpayers would pay to boost the profits of brand-name pharmaceutical companies at the federal rather than the provincial level. People paying for their drugs out-of-pocket or through private insurance will be hit twice—through higher drug costs and their federal taxes.

³⁶ In 2016, Canadians spent 1,074 dollars per capita on drugs, compared to 1,470 dollars in the U.S and an OECD average of 719 dollars. Canadian Institute for Health Information, «Drug Spending at a Glance,» <https://www.cihi.ca/sites/default/files/document/nhex-drug-infosheet-2018-en-web.pdf>.

³⁷ The PBO estimates the extra costs to consumers and taxpayers at 392 million dollars annually. When drugs dispensed in institutions such as hospitals, clinics and care facilities are included, «the national cost estimate would reach more than half a billion dollars.» See Office of the Parliamentary Budget Officer, «Patent restoration and the cost of pharmaceuticals,» April 26, 2018, p. 3.

³⁸ Joel Lexchin and Marc-Andre Gagnon, «CETA and pharmaceuticals: impact of the trade agreement between Europe and Canada on the costs of prescription drugs,» *Globalization and Health*, volume 10, article number: 30 (2014).

³⁹ Office of the Parliamentary Budget Officer, «Patent restoration and the cost of pharmaceuticals,» April 26, 2018, p. 3.

⁴⁰ Patent linkage provisions, which require that health regulators must confirm that all the relevant patents on a brand name product have expired before granting marketing approval to a generic version of a brand name drug, are prohibited in the EU.

⁴¹ Data protection refers to the data submitted to Health Canada by a drug company seeking authorization for a new drug in order to demonstrate that it is safe and effective. The current term of data protection in Canada is eight years (plus an additional six months for pediatric drugs).

5

REGULATORY COOPERATION AND THE CETA COMMITTEES

If government procurement and market access were the European Commission's primary interests in negotiating CETA, Canadian business associations and lobbyists emphasized the role they believed the agreement should play in eliminating regulatory differences between the two jurisdictions. Most of these differences pertain to the regulation of food safety measures and biotechnology, chemicals, and consumer and environmental protections. Canadian exporters have long complained that many European measures in these areas are unnecessary, overly burdensome, not »science-based« and/or merely disguised trade barriers.

Civil society groups in Europe rightfully point out that these targeted safety measures are legitimate expressions of public preferences for how certain goods should be regulated. They add that where the EU still retains the right to regulate based on the precautionary principle (better safe than sorry), in Canada—like in the United States—the priority is on granting marketing approval for new products unless there is foolproof evidence this would cause undue or unmanageable harm to the public or the environment. For example, Canada allows the agricultural spraying of dozens of pesticides banned in the EU, including noenicitinoids believed to be decimating pollinators and other insect populations.⁴²

Canada has taken the EU to WTO arbitration multiple times in the last 20 years to challenge sanitary and phytosanitary measures and technical regulations the government claimed to be wrongfully impeding market access to the European market for Canadian exporters. These disputes have targeted EU restrictions on imports of meat from cows and pigs raised using hormones or antibiotics, genetically modified crops, products derived from the Canadian seal hunt, some wood products, and asbestos.

With CETA in place, the Canadian government and Canadian exporters (including Canadian subsidiaries of U.S. chemicals, biotech and agricultural producers) can avoid the cumbersome yet relatively transparent WTO dispute settlement process by taking regulatory complaints to a CETA committee instead. There are 19 committees in all, including those

dedicated to agriculture, forest products, biotechnology, ecommerce, raw materials, financial services, trade in goods (where »technical barriers to trade« are discussed), sanitary and phytosanitary standards, etc.

General information on committee meeting dates, agendas and work summaries are shared with the public, but there are no detailed minutes or full participant lists.⁴³ With some committees expected to work closely with private sector actors in developing their agendas, and the fact the CETA Joint Committee has the authority to enact committee decisions by amending the trade agreement in ways that will require domestic regulatory reforms, the current lack of transparency and democratic accountability at this level of CETA implementation is quite worrying.

In addition to these committees, CETA's regulatory cooperation chapter infuses bilateral cooperation with a regulatory ideology that is much closer to the North American »risk-based« model than the EU's precautionary approach. States abiding by this U.S.- and OECD-sanctioned »good regulatory practice« demand that regulators prioritize the commercial interests of business when developing new rules and deciding who to consult in the process. The Canadian government expresses the goal of CETA's regulatory cooperation chapter, and accompanying Regulatory Cooperation Forum, this way (emphasis added):

*By facilitating earlier access to regulatory development processes under CETA, it is expected that the **differences in regulatory approaches between Canada and the EU will be reduced over time**, resulting in fewer barriers to trade when regulations are implemented (...). **The goal is not regulatory harmonization, but rather, effective regulation that facilitates trade.** Each party retains complete control over its own regulatory process.⁴⁴*

⁴² Ecojustice. »Protecting Canadians from harmful pesticides banned in other countries.« Accessed August 1, 2019: <https://www.ecojjustice.ca/case/pesticides-out-of-canadas-environment/>.

⁴³ The Canadian government's CETA Committee page can be found here: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/committees-comites.aspx?lang=eng>.

⁴⁴ Global Affairs Canada, CETA Chapter Summaries, Accessed Dec. 2, 2018: http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/chapter_summary-resume_chapitre.aspx?lang=eng#a21.

The North American experience with regulatory cooperation shows there is a high risk that cooperative CETA working groups will be dominated by industry stakeholders, with non-industry groups, if they ever hear about the work, asked only to comment on late-stage proposals for regulatory reforms.⁴⁵ Ultimately, the closed-door nature of the CETA committees can—and in some cases appears intended to—isolate regulators from contesting viewpoints, which undermines democratic accountability and weakens the capacity of government to respond effectively to threats to public health, workers and the environment.

45 Stuart Trew, »International Regulatory Cooperation and the Public Good: How »good regulatory practices« in trade agreements erode protections for the environment, public health, workers and consumers.« Ottawa: Canadian Centre for Policy Alternatives (co-published with Bund für Umwelt und Naturschutz Deutschland, Corporate European Observatory, Institute for Agriculture and Trade Policy, Lobby-Control, Centre for Research on Multinational Corporations, and Transnational Institute), May 2019. Accessed August 1, 2019: <https://www.policyalternatives.ca/publications/reports/international-regulatory-cooperation-and-public-good>.

6

PUBLIC SERVICES

Controversy over perceived threats to public services nearly derailed the signing of CETA. In order to get the deal accepted, the parties had to craft a joint interpretive statement that included some extraordinary assurances regarding the autonomy of governments to provide, regulate, create and expand public services.

Unfortunately, these strong assurances are not adequately reflected in the text of the treaty itself. CETA contains no effective general exclusion for public services. Instead, there is a patchwork quilt of investment and services exclusions that only partially and unevenly insulates public services from the full force of the treaty.

CETA excludes »services provided in the exercise of governmental authority.« But these are defined as »any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.« This exclusion is too narrow to be useful in protecting public services. Public services are rarely delivered exclusively by government on a strictly non-commercial basis. They typically are a complex, shifting mix of governmental and private funding, and public, private not-for-profit, and private for-profit delivery.

Because of the weakness of this general exclusion, governments must rely on reservations, or country-specific exemptions, to shield their public and not-for-profit services. Such reservations vary widely and can also be of limited effectiveness. CETA was the first EU trade treaty to employ a negative list approach, meaning all services are covered unless governments explicitly exempted them from key treaty obligations.

Under the negative list approach there are two types of allowable reservations: bound (Annex I) reservations, which only protect existing measures, and unbound (Annex II) reservations, which are stronger and allow for a degree of future policy flexibility. The scope of these reservations varies greatly by country, often depending on the ideological orientation of the government in power when the free trade agreement is negotiated.

Key public service sectors such as health, public education and social services are generally protected through the stronger unbound reservations, although this varies by jurisdiction. Even the stronger Annex II reservations are not fully

effective, because certain investment protection obligations, including those related to indirect expropriation and fair and equitable treatment, are not reservable.

In areas where only the weaker Annex I protection applies, excluded measures cannot be made more trade-restrictive (the standstill clause), and once a measure is amended or eliminated the protection disappears (the ratchet effect). In such sectors, CETA's services and investment provisions make it difficult or impossible for future governments to restore or expand universal public services without the risk of facing a trade treaty challenge.

Typically, existing public services at the state, provincial and local government levels are sheltered by the weaker bound reservations. For Canadian provinces and municipalities, such sectors commonly include wastewater, waste management services, private education, public transit, and public automobile insurance.

Since CETA was ratified, four left-of-centre provincial governments (in Alberta, Manitoba, Ontario and Quebec) have been replaced by right-wing governments. These new conservative governments have begun to reverse and repeal a swath of progressive public policies and regulations. They are openly committed to privatizing publicly owned assets and to exploring how existing public services can be provided through private means. These include public-private partnerships (P3s), social impact bonds, and other forms of stealth privatization.

At his first intergovernmental Council of the Federation meeting in July 2019, new Alberta Premier Jason Kenny announced his province would be eliminating half of its exceptions under the Canadian Free Trade Agreement (CFTA—see section on government procurement). At that meeting the premiers also agreed to amend the CFTA to allow provinces to unilaterally withdraw exemptions. These exemptions explicitly mirror those taken by provinces under CETA.

Such dynamics expose the flaws in CETA's protection for public services and illustrate how negative listing and the ratchet and standstill clauses, combined with the ebb and flow of electoral politics, can lock in privatization and limit the options of future governments to create, expand and restore public services. These flaws can best be remedied by in-

cluding a fully effective, unequivocal exclusion for public services in all new and existing trade and investment agreements. Such a carve-out should ensure that all levels of government can create new public services, expand existing ones, and reverse privatization without incurring compensation claims or facing sanctions under trade and investment treaties.⁴⁶

⁴⁶ For proposed wording see Markus Krajewski. »Public Services in Bilateral Free Trade Agreements of the EU.« November 2011. Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1964288.

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IMPRINT

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TAKING STOCK OF CETA

Early Impacts of the EU–Canada Comprehensive Economic and Trade Agreement



Prior to CETA's entry into force, Canada's trading relationship with the EU was highly imbalanced, both quantitatively and qualitatively. To date, there is little indication that CETA is reversing these trends. In fact, the composition of Canadian exports to the EU underlines Canada's continuing reliance on the export of raw or semi-processed products. Since CETA implementation Canada's trade deficit with the EU has increased. While estimating the effect of growing trade imbalances on employment is difficult at this time, previous research suggests the impact of CETA will be negative in this respect for Canada. Studies estimate that complete tariff elimination under CETA would lead to the loss of 23 – 28,000 Canadian jobs. 200,000 job losses are estimated for the EU.



The majority of small businesses in Canada does not export at all, and does not know where to start. When Canadian SMEs do venture into international markets, for obvious reasons of proximity and familiarity they concentrate on exporting to the United States. Federal government should put resources toward trade promotion and its trade commissioner services in export destinations. Trade promotion is a more immediately beneficial service to Canadian businesses than continually signing new free trade deals that few SMEs know how to navigate or would ever need to.



During the decade-long CETA negotiations, government procurement was a top priority of the European Commission. First figures indicate that the value of EU-firm contracts is up 14 per cent from the pre- to post-CETA period. CETA contains no effective general exclusion for public services. Instead, there is a patchwork quilt of investment and services exclusions that only partially and unevenly insulates public services from the full force of the treaty. CETA was the first EU trade treaty to employ a negative list approach, meaning all services are covered unless governments explicitly exempted them from key treaty obligations. Effectively, CETA has the potential to permanently and comprehensively remove one of the last remaining tools public entities have to foster sustainable, equitable, local economic activity.

Further information on the topic can be found here:

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