

# Making Sense of the CETA

An Analysis of the Final Text of the  
Canada-European Union Comprehensive  
Economic and Trade Agreement

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# Agriculture and Food Sovereignty

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## Agriculture

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### Key Points

*Unless otherwise noted, all Articles, Annexes and Appendices referenced in this section refer to the August 2014 final version of the CETA text first leaked by German broadcaster ARD and now available at: <http://eu-secretdeals.info/ceta>.*

- The expanded intellectual property rights enforcement tools under the CETA will give multinational seed companies more control of Canadian farms, increase seed costs and destroy farmers' autonomy, especially when taken in conjunction with Canadian Bill C-18 (*The Agricultural Growth Act*).
- The CETA will not lead to significantly more beef or pork exports from Canada to Europe.
- The CETA will not open up export markets for genetically modified crops, although the regulatory co-operation provisions create new

channels for industry to apply pressure to weaken EU food safety standards (see section on Regulatory Co-operation by Alessa Hartmann).

- Canadian dairy farmers will lose 4% of the domestic cheese market.
- Local food procurement policies for government entities will be significantly undermined.

## Analysis of Key Provisions

### Intellectual Property Rights (Chapter 22)

- Chapter 22, Article 12 states, “The Parties shall co-operate to promote and reinforce the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (UPOV).” In December 2013, the Canadian government introduced Bill C-18, *The Agricultural Growth Act*, an omnibus agricultural bill that amends several agricultural laws, including Canada’s *Plant Breeders Rights (PBR) Act*. The changes to the PBR Act under Bill C-18 will give global seed companies much more control over seeds in Canada by moving Canada from UPOV ‘78 to UPOV ‘91.
- Bill C-18 passed second reading on June 17, 2014 and is now in the hands of the Standing Committee on Agriculture and Agri-Food.
- Canada does not permit patenting of higher life forms such as plants but does allow gene sequences, such as those used in genetically modified crops, to be patented.
- Both PBRs and patents are forms of intellectual property rights and the seed industry uses both PBRs and gene patents to increase their control of and revenues from commercial seed production and distribution worldwide.
- Chapter 22, Article 18 of the CETA gives intellectual property rights holders the ability to use the courts to seek injunctions against suspected infringers, such as farmers suspected of selling or storing farm-saved seed, before determining whether there has been an actual violation. Judges will be granted the authority to order the seizure of assets, equipment and inventory of suspected infringers and any third parties they believe are helping the suspected infringement — before the case is ever heard in court.

- The 2004 Supreme Court of Canada decision in the *Monsanto v. Schmeiser* case ruled that a farmer can be found in violation of patent rights regardless of how patented genes in seed arrive on the farmer's land. If the courts interpret PBR infringement in the same fashion, even farmers who use older seed that is not PBR-protected might be accused of infringement if their crops contain small amounts of a PBR-protected variety.
- Article 18 would also allow the seizure of a farmer's property, crop and bank account on the mere suspicion of PBR or patent infringement. As a result a farmer could lose everything and would have no means to mount a defence. To avoid such risk, farmers may decide to simply purchase seed every year, increasing their costs and decreasing the diversity of crop varieties grown each year. This "litigation chill" will lead to a loss of both farmer autonomy and agricultural biodiversity and to a massive transfer of wealth from Canadian farmers to foreign-based seed companies.

### **National Treatment and Market Access for Goods (Chapter 3)**

- Chapter 3, Annex X.5 (Tariff Elimination) gives new duty-free access under Tariff Rate Quotas (TRQs) for 45,840 metric tonnes of beef/veal (carcass weight equivalent) and 75,000 metric tonnes of pork (carcass weight equivalent), both phased in over six years.
- Without the CETA, the EU already gives Canada tariff-free access for over 23,000 tonnes of hormone-free beef. We do not fill that existing quota now.
- The EU has not changed its position opposing the use of hormones in beef production.
- The EU imports most its beef from Brazil, Argentina and Uruguay. Brazil banned the use of growth hormones in beef in 1991 to maintain the European market.
- The EU's exports of pork exceed Canada's total pork production. Europe prohibits pork produced with ractopamine, which is commonly used in Canadian pork production.
- Canada has three abattoirs that meet the EU standards for beef and seven that meet EU standards for pork.

- The promised gains for beef and pork farmers are therefore illusory.
- Annex X.5 also gives the EU new market access to Canada for 16,000 tonnes of fine cheese and 1,700 tonnes of industrial cheese, both phased in over six years.
- Canadian dairy farmers will lose 4% of the domestic cheese market, which is equivalent to all the milk produced in Nova Scotia, and the growing number of artisanal cheese producers using local dairy ingredients and serving specialty markets in Canada will find it harder to thrive.
- European dairy farmers obtain 40% of their income from state subsidies while Canadian dairy farmers receive their dairy income from the marketplace through cost of production formula determined by the milk marketing boards.

#### **Dialogues and Bilateral Co-operation (Chapter 29)**

- The CETA will not open Europe's doors to biotechnology products from Canada. There is no commitment by the European Union to lift restrictions on imports of genetically modified organisms. In Chapter 29, the EU has agreed only to discuss biotechnology issues (see Chapter 29, Articles X.01 and X.03).

#### **Government Procurement (Chapter 21)**

- Under this chapter, municipalities, schools, hospitals, prisons, universities and other government entities will lose the ability to implement local food procurement policies, thus removing an important policy tool that is currently and increasingly being used to support Canadian farmers and strengthen Canada's food sovereignty (see section on Local Food Support Programs by Amy Wood).

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## Fish Products

*Jim Stanford, Unifor*

### Key Points

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- Canadian fishing stakeholders have generally judged that the provisions of the CETA, including the partial elimination of minimum processing requirements, are a worthwhile trade-off for the elimination of EU tariffs on our seafood exports to Europe. Of course this does not imply that the CETA as a whole is beneficial for Canada. And the concessions made in the fish deal will likely spill over into other government policies and regulations, including domestic processing requirements, in other sectors.

### Background

- Canada exports close to \$400 million worth of fish products to EU countries each year, primarily from the east coast, and mostly comprised of processed seafood. Import flows back the other way are small, generating a trade surplus of around \$350 million per year. Exports have been limited by various EU quotas, by weak demand in Europe (reflecting the economic crisis there), and the high Canadian dollar.
- Canada's fisheries industry comprises various sub-sectors, including larger offshore boats (usually with a corporate structure of ownership), smaller independent inshore fishers, and fish processing plants. Employment in processing operations has declined by one-third over the last decade, reflecting fluctuating stocks, technological change, the consolidation of smaller plants, and a drive by fish processors to have Canadian-caught fish processed in cheaper offshore plants. Newfoundland and Labrador has a rule requiring (with certain exceptions) fish caught in province to be landed and processed on shore, although the usefulness of this rule in defending fish processing jobs has been debated. For example, some argue that the

rule undermines Canadian exports by making the overall product more expensive.

- A key priority for fishing communities in recent years has been to protect current federal rules limiting the market sale of commercial fish licenses, and requiring the owners of licenses to also operate those licenses. Policy has also prevented large fish processing companies themselves from attaining fish harvest quotas. This has prevented the consolidation of fishing quotas into large commercial blocks, which would eliminate access by smaller operators to the harvest.

### Analysis of Key Provisions

- The CETA would eliminate (after three years) the existing Newfoundland and Labrador prohibition on exports of raw fish as it applies to EU-bound exports. This provision is described in Article 12 on National Treatment and Market Access of Goods. However, in practice it will be increasingly difficult for Canada to maintain those prohibitions on trade with *any country* once they have been abolished for the EU.
- The schedule for tariff reduction is specified in a partial tariff offer schedule included with the leaked documents. For most fisheries products, the EU applies a phase-out Schedule D, with tariffs phased out evenly over eight years. In some cases the phase-out is faster: four years for frozen lobster and crab, six years for prepared lobster, mussels, and snails. It seems that Canadian tariffs on fish and seafood imports are eliminated immediately, since any sectors not included in the tariff offer schedule are allocated to Schedule A, which is immediate elimination. Since Canada's fish imports from Europe are small and do not generally compete directly against Canadian equivalents the impact of this Canadian tariff elimination will also be small. The elimination of EU tariffs will likely provide a significant boost to Canada's fish product exports to the EU.
- Special provisions regarding quotas for EU imports of duty-free processed shrimp and prawns are described in Annex X.5.8. This allows for tariff-free imports of up to 23,000 metric tonnes of processed shrimp for the first seven years of the CETA. The quota is administered on a first-come, first-served basis. These products currently face a 20% EU tariff, which would normally be phased out evenly over

eight years under the CETA. This provision, therefore, gives limited tariff-free access to Canadian producers right from implementation of the CETA rather than waiting for the phase-out. The tariff codes for this provision are 1605.20.10 and 1605.20.99.

- Similarly, Annex X.5.9 allows for a quota of EU imports of duty-free frozen cod, up to 1,000 metric tonnes, also in the first seven years. Without it, Canadian frozen cod producers would face a 7.5% EU tariff that is being phased out over eight years. As with shrimp, this gives accelerated tariff-free access for up to 1,000 metric tonnes. The tariff code for this provision is 0304.29.29.
- Existing rules prohibiting the sale of fish quotas, and requiring the separation of fish quotas from fish processing corporations, are listed as exemptions by the federal government and hence are not directly affected by the CETA. However, past experience indicates that by requiring regulations like this to be listed as negative exemptions (to a presumed unrestricted benchmark), it sets the stage for future efforts to weaken or eliminate restrictions. And the CETA would certainly prohibit the extension of these rules to other products. In this regard, the CETA still restricts the ability of Canadian governments to actively manage any resource stocks in the interests of harvesters.

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## Local Food Support Programs

*Amy Wood, Canadian Centre for Policy Alternatives*

### Key Points

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- Public procurement of food is an important driver of local food security because it ensures market access for small-scale food producers and reduces the risk associated with the volatility of export markets.<sup>71</sup> Buy-local public procurement also increases consumer choice, stimulates regional economies and represents an alternative to conventional distribution channels.



- Procurement policies supporting local food are on the rise in several provinces, including Ontario (with the 2009 commitment of \$24 million to local procurement and the city of Toronto's 2008 pledge to have 50% local food in city services),<sup>72</sup> Nova Scotia (where ninety percent of processed dairy products are locally procured for health care and justice institutions), and British Columbia (where 14,000 schools procure food locally). In Ontario in particular, municipalities, academic institutions, school boards and hospitals, commonly known together as the MASH sector, represent an attractive market for local food producers, with total meal values estimated to be \$285 million per year.<sup>73</sup>
- In Canada, local food procurement is limited by a number of international agreements, including the General Agreement on Tariffs and Trade (GATT), the World Trade Organization Agreement on Government Procurement (GPA), the North American Free Trade Agreement (NAFTA) and the Agreement on Internal Trade (AIT). However, none of these existing agreements significantly curtail the procurement of local food. Both the 1994 and 2012 versions of the WTO GPA exempt municipalities and the broader public sector entirely and allow for policy space to procure local food and food services.
- Under the CETA, market access for procurement is extended to all levels of government, which includes the broader MASH sector. This means that it will no longer be permissible for governments at the federal, provincial or municipal level to give purchasing preference to goods or services from local companies or individuals if the contract exceeds a given threshold. The CETA goes against provincial commitments to increase local food provision<sup>74</sup> and threatens the ability of municipalities, provinces and public institutions to procure local food and food services.
- The CETA threshold for the procurement of goods and services by sub-central entities is 200,000 SDRs (approximately \$330,000 CDN), which is far lower than the 355,000 SDRs (approximately \$590,000 CDN) required by NAFTA and the WTO GPA. Preferential food service contracts above these thresholds, which, to date, have been unaffected by international trade law, are now prohibited under the CETA. This is higher than the AIT thresholds of \$25,000 CDN for goods and \$100,000 CDN for services. However, it is difficult to compare these

numbers because the earlier international agreements did not include municipal entities and the AIT provides for various exclusions and exceptions that are not allowed under the CETA.

- There may still be some potential to buy local food outside of the CETA procurement chapter. Buying “local” food could be legally permissible if labels or technical specifications do not make reference to political boundaries (i.e. national or provincial origins).<sup>75</sup> Thus, social and environmental criteria, such as carbon footprint limits, could arguably be defensible.<sup>76</sup> Another potential avenue to buy local food would be through geographical indicators, although Canada has made significant concessions to the EU in this area (see section on Geographical Indications by Karen Hansen-Kuhn).

## **Analysis of Key Provisions**

### **Non-discrimination**

- Article IV.2 affirms the principles of national treatment and MFN status for government contracts, which is consistent with the WTO GPA (see section on Public Procurement by Stuart Trew). As Trew points out, the EU achieved non-discriminatory access as well as “unconditional access” at the municipal level, because Canada unilaterally gave up sub-central government autonomy for procurement. The CETA will forbid minimum local content requirements and prevent provincial and municipal government bodies from using public spending to further food security aims.

### **Scope and Coverage**

- Annex X-02 (Sub-Central Government Entities) covers all government entities, unless otherwise indicated by the province/territory (see *Table 2*). Although there are some exceptions, the vast majority of provinces and territories have given up most rights to procure sub-nationally in exchange for market access. None of the listed exceptions have significant relevance to local food purchasing.
- There is much resistance at the municipal level, and over 50 communities have voiced their discontent about the CETA procurement rules.<sup>77</sup>

- Annex X-04 (Goods) states that unless otherwise specified and subject to Paragraph 2, this agreement covers all goods. This includes food preparation and serving equipment, agricultural supplies and live animals.

### **General Exceptions**

- Annex X-07 (General Notes) states that procurement does not apply “in respect of agricultural goods made in furtherance of agricultural support programs or human feeding programs.” The terms “agricultural support programmes and human feeding programmes” are used ambiguously and it is unclear what constitutes such a program. In the EU list of exceptions, human feeding programmes specifies food aid including urgent relief aid as an example, but this qualifier is not used in the Canadian list of exceptions. Similar language on agricultural support programs or human feeding programs appears in the WTO GPA.
- There is room for technical requirements on social or environmental indicators such as organic labeling or freshness.
- Although Article III (Security and General Exceptions) ensures that nothing in the agreement prevents a Party from enforcing measures to “protect public morals, order or safety, or necessary to protect human, animal or plant life or health,” there is no evidence to date that public procurement could be excluded through these measures.
- In Article II.3 there are exceptions for international assistance and development aid, but this has no relevance for domestic buy local programs.

### **Thresholds**

- The threshold for government goods and services is 200,000 SDRS (approximately \$330,000 CDN) each. For context, the average family of four spends \$8,535 annually on food.<sup>78</sup> While smaller procurement initiatives such as staff cafeterias, vending machines in public spaces and childcare services could conceivably have contracts under the 200,000 SDR threshold, larger contracts will no longer be feasible. For example, the Region of Waterloo owns Sunnyside Home, a live-in care facility that has a \$1 million annual contract with Sysco to

provide local food for its residents.<sup>79</sup> Many institutions in the MASH sector have made recent commitments to increase their local food content requirements,<sup>80</sup> which the CETA would prohibit.

- Local food advocates in Waterloo, Ontario see the 200,000 SDR threshold as a major impediment to the area's local food movement, as promoted by groups such as the Waterloo Food System Roundtable and TransitionKW.<sup>81</sup> Other groups, such as Sustain Ontario, have also expressed concern that large institutional contracts would exceed this threshold.

### **Valuation**

- Subdividing food contracts allows smaller producers greater market access opportunities, but is prohibited in the CETA on the basis that it would be an intentional exclusion by a Party (see Article II.6).
- Article II.7 provides very specific stipulations for defining "recurring contracts." Forbidding multiyear or recurring contracts would significantly curtail the ability of the MASH sector to establish local food contracts. Where price is the sole criterion in determining contracts (see Article XIV), smaller companies are at a comparative disadvantage because they have higher costs per unit. This also has health implications because purchasing food based solely on price excludes consideration of other factors such as freshness or nutritional value.

### **Technical Specifications**

- Article IX.1 states: "A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade." The phrase "with the effect of creating unnecessary obstacles to international trade," has been routinely adopted in agreements since the WTO Agreement on Technical Barriers to Trade (TBT). The same language was used in the 2013 EU-Iraq Partnerships and Co-operation Agreement in reference to procurement.
- As outlined in Article 2 of the TBT, technical regulations must "not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create." This

has been tried in the WTO dispute settlement system, notably in the 1999 European Communities-Asbestos case. Underpinning this case was a preference for scientific based evidence, which could make it difficult for countries to use the precautionary principle to justify domestic supports for local foods. However, there is some latitude on grounds of health risk, but the evidence needs to be conclusive. Although a legitimate objective can be the protection of the environment (included in Article 2.2 of the TBT), technical standards such as certification schemes for organic content or freshness could cause a trade dispute if they are deemed overly restrictive.<sup>82</sup>

### **Enforcement**

- Under the procurement rules of the CETA, prospective foreign suppliers will gain new rights to dispute any perceived unfairness or local bias in tendering decisions before a federal or provincial administrative tribunal. Such semi-judicial bodies have the authority to award compensation to foreign suppliers and to compel governments to re-tender the contract.<sup>83</sup>
- In addition, the CETA's investment rules would allow foreign investors to bypass domestic court systems and instead use the investor-state dispute settlement process (see section on Investor-State Dispute Settlement by Peter Fuchs). The tribunals can order governments to compensate investors allegedly harmed by public policies, laws, or regulations.

**TABLE 1** Summary of Provincial and Territorial Procurement Commitments

Province/Territory	All government entities <sup>84</sup>	Exceptions
British Columbia	Yes	The Legislative Assembly and its independent offices.
Alberta	Yes	The Legislative Assembly, the Legislative Assembly Office, the Office of the Auditor General, the Office of the Chief Electoral Officer, the Office of the Ethics Commissioner, the Office of the Information and Privacy Commissioner and the Office of the Ombudsman.
Manitoba	Yes	
Saskatchewan	All ministries, agencies, Treasury Board Crown corporations, boards, commissions; (ii) municipalities; and (iii) school boards and publicly-funded academic, health and social service entities.	
	All departments, governmental agencies; and parapublic organizations as defined by the <i>Act Respecting Contracting by Public Bodies</i>	
Ontario	All provincial ministries and classified agencies but does not include energy agencies, agencies of a commercial or industrial nature, and Ontario Infrastructure and Lands Corporation; (ii) school boards and publicly-funded academic, health and social service entities; and (iii) municipalities but does not include municipal energy entities.	Offices of the Legislative Assembly
New Brunswick	An extensive list of departments, secretariats, academic institutions and agencies is given (see Annex).	
Nova Scotia	All public sector entities as defined in the <i>Public Procurement Act</i> .	(i) any listed intergovernmental or privatized governmental unit if the Province does not own or control a majority of it; (ii) any entity listed or described in Annex X-03 Section A, whether as an inclusion or exclusion; (iii) Emergency Health Services (a division of the Department of Health) in respect of ground ambulance-related procurement, for Emergency Health Care purposes; (iv) Sydney Tar Ponds Agency; (v) Nova Scotia Lands Inc.; and (vi) Harbourside Commercial Park.
Prince Edward Island	All departments, agencies; (ii) municipalities; and (iii) school boards and publicly-funded academic, health and social service entities.	
Newfoundland and Labrador	Yes	
Yukon	Covers 14 departments and one agency only.	
Northwest Territories	All i) ministries, agencies; (ii) municipalities; and (iii) school boards and publicly-funded academic, health and social service entities.	The Legislative Assembly and procurement subject to the Northwest Territories Business Incentive Policy.
Nunavut	Yes	The Legislative Assembly and procurement subject to the Nunavummi Nangminiqagtunik Ikajuuti Policy.