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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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Trade, Tariffs and Transport

Trade and Tariffs

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Key Points

*Unless otherwise noted, all Articles, Annexes and Appendices referenced in this section refer to **Chapter 3** of the August 2014 final version of the CETA text first leaked by German broadcaster ARD and now available at: http://eu-secretdeals.info/ceta.*

Tariffs

- The CETA removes virtually all (99%) tariff supports for sectors of the Canadian economy with some tariffs being removed immediately upon implementation of the agreement and others within the span of one to eight years. Crucially, the CETA removes the ability of future governments to utilize tariffs to support strategic sectors as Canada competes with the much larger EU economy.

- Tariffs on most Canada-EU trade of industrial goods have already been removed or substantially reduced and are generally low with tariff rates of on average 3.5% for EU exports to Canada and 2.2% for Canadian exports to the EU. Ultimately the economic gains from tariff removal will be minimal, but given that average tariffs are currently higher on EU exports than Canadian exports, the EU economy would gain more from mutual tariff removal.
- The removal of tariffs will create winners and losers in Canada. Canadian sectors facing reduced EU tariffs could benefit through lowering the price of their goods on the European market. Conversely, some producers for the Canadian market will find it difficult to compete with cheaper EU imports following tariff removal.

Canada-EU trade is imbalanced

- Canada is increasingly relying on exports from the extractive industries such as mining and oil and gas; a smaller portion of exports are produced by the manufacturing industry. The mining and oil and gas industries, which in 2003 accounted for 17% of Canada's exports, now comprise 38% of exports to the EU. Canadian manufacturing's contribution to exports to the EU has fallen in relative importance from 81% in 1993 to 75% in 2003 to 56% in 2013.
- Conversely, an increasing portion of Canadian imports from the EU are made up of manufactured goods, increasing from 92% in 2004 to 95% in 2013.
- The value-added composition of Canada's exports to the EU is declining. Canada is increasingly exporting primary commodities and importing finished products produced in EU countries. Gold, Canada's top export, accounts for 32% of the top 25 exports, followed by diamonds (6%), iron ores (6%), uranium (6%) and airplanes (5%). In this list of top exports, 82% are primary or barely processed commodities. This is in sharp contrast to the EU's exports to Canada of which only 17% are primary products. The EU's top exports to Canada are pharmaceuticals (17% of the top 25 exports), automobiles (16%), petroleum products (13%), gas turbines for airplanes (8%) and crude petroleum (5%). Eighty-three per cent (83%) of the EU's exports to Canada are comprised of highly processed or finished products whereas only 18% of Canada's exports are in this category.

- The trend continues in 2014, with the most recent data showing Canada's fastest growing export is crude oil from Newfoundland and Labrador, which has tripled since 2013. Canada's top three exports — gold, crude oil and iron ores — accounted for 50% of Canada's top 25 exports for the first half of 2014.
- The CETA will do nothing to reverse the imbalanced Canada-EU trade trajectory, rather it will exacerbate it by removing the ability of governments to actively facilitate a more productive and value-added manufacturing based economy. In effect, the CETA locks Canada into the current trade pattern.

Canada's ongoing trade deficit with the EU

- Canada's exports to the EU continue to fall short of imports from the EU. Over the past decade, this trade deficit has fluctuated between $12 billion and $21 billion. In 2013, Canada exported $33 billion in goods and imported $53 billion, leading to a $20 billion trade deficit. In other words, Canada imports $1.6 worth of goods from the EU for every $1 in goods it exports.
- Canada's trade balance with the EU is vulnerable to fluctuations in commodity prices. Over the past decade, Canada's trade deficit has been highly correlated to the value of Canada's gold exports. The record-high gold prices over the past decade mask a troubling underlying bilateral trade imbalance between Canada and the EU.

Benefits of the CETA?

- The Canadian government's prediction of large trade benefits from the CETA is highly questionable. Its assessment, made first in a 2008 joint study with the EU, is at best partial as the study did not address the social, health and safety, and environmental costs associated with the reduction of regulatory options, the curtailment of future public services, and other non-tariff elements of the agreement. The economic modeling used in the 2008 joint study does not address key economic policy challenges, such as unemployment, international capital flows, trade imbalances and exchange rate fluctuations, nor does it address the long-term consequences of Canada's reliance on exports of unprocessed non-renewable resources.

Analysis of Key Provisions

Tariffs and trade

- The CETA is designed to increase unconditional access to the Canadian and EU economies by investors from both Parties. It removes tariffs but contains no new measures to create employment or improve local and regional development opportunities.[52] Indeed, various measures within the agreement actively remove the ability of governments to create jobs and encourage local economic opportunities. In effect, the agreement entrenches the subordination of job creation and local economic development to private sector international investment strategies.

Tariffs

- Tariffs are a widely used and successful policy tool to support and advance strategic economic sectors in the context of aggressive trade policies from larger advanced economies.[53] The level of tariffs and the sectors affected vary over time based on the economic conditions and the prevailing policy orientation of the day. The CETA removes virtually all tariffs (99%) from Canada-EU trade. The agreement schedules the removal of tariffs for each product category over a period ranging from immediately, upon implementation of the agreement, to eight years. But perhaps more importantly, the CETA removes the ability of future governments to utilize tariffs to support national and regional economic development objectives (see Annex X.5.1).
- Tariffs on most Canada-EU trade in industrial goods have already been removed or substantially reduced (largely due to multilateral tariff reductions) and are generally low with tariff rates of 3.5% for EU exports to Canada while Canadian exporters to the EU face average rates of 2.2%.[54] The removal of tariffs could create some winners (e.g. in sectors facing reduced tariffs for their exports to the EU), but Canadian producers in the sectors that have been supported by tariffs will likely face difficulties as relatively cheaper EU products enter the Canadian market. This will affect sectors such as processed foods, textiles, clothing, motor vehicles, machinery and equipment,[55] challenging the viability of Canadian producers and reducing employment in these sectors.[56]

Current trade imbalanced

- Canada is increasingly relying on exports of mining and energy products. Exports from extractive industries have increased by 263% over the past decade whereas manufactured and agricultural exports have been relatively stagnant, increasing by 24% over this period.[57] As a result, the mining, oil and gas industries, which in 2003 accounted for 17% of Canada's exports, now comprise 38% of exports to the EU. Conversely, Canadian manufacturing's contribution to exports to the EU has fallen from 81% in 1993 to 75% in 2003 to 56% in 2013. Canada is importing more EU-manufactured goods, increasing from 92% of Canadian imports from the EU in 2004 to 95% in 2013.

- The imbalanced trade between Canada and the EU is exemplified by the top exports. The EU's largest export to Canada is pharmaceuticals, a cutting edge industry with a significant level of research and development. Canada's largest export to the EU is unprocessed gold, a non-renewable resource with minimal level of value added within the Canadian economy beyond extraction.

- The value-added composition of Canada's exports to the EU is declining such that Canada is increasingly exporting primary commodities and importing finished products produced in Europe. Gold accounts for 32% of the top 25 exports followed by diamonds (6%), iron ores (6%), uranium (6%) and airplanes (5%). In total, 82% of Canada's top 25 exports are primary or basically processed products. This is in sharp contrast to the EU's exports to Canada, of which only 17% are primary products. These include pharmaceuticals (17%), automobiles (16%), petroleum products (13%), gas turbines for airplanes (8%) and crude petroleum (5%). Eighty-three percent (83%) of the EU's top exports to Canada are comprised of highly processed or finished products whereas only 18% of Canada's top exports to the EU are in this category.

- The trend is continuing in 2014, with the most recent data showing Canada's fastest growing export is crude oil from Newfoundland and Labrador, which tripled since last year. Canada's top three exports — gold, crude oil and iron ores — accounted for 50% of Canada's top 25 exports for the first half of 2014. Canada is increasingly supplying primary products for EU manufacturing and importing

European finished products, a trade relationship wherein most of the value-added production occurs in the EU.

- Canada's trade with the EU exemplifies the broader challenge facing Canada's integration into the global economy. According to OECD data, Canada's exports are increasingly found in the early stages and low value-added stage of the 'global value chains.' Between 1995 and 2011, Canada's exports of primary commodities as a portion of total exports increased from 12.5% of exports to 27.6% (OECD average 16.6%); exports of manufactured intermediaries have declined from 52.3% to 44.5% (OECD avg. 48.8), and; exports of finished products have declined from 35.2% of exports to 27.7% (OECD Avg. 34.7%).[58] The Canadian economy is exhibiting a comparative advantage in low- to medium-low technology manufacturing and a disadvantage in high- and medium-high technology in contrast with the G7 advanced economies, which exhibit advantages in high- and medium-high technologies.[59]

- The challenge for the Canadian economy is to shift from a reliance on primary commodities to a more diversified economy that includes the development of value-added and high-tech sectors of the economy. The CETA will do nothing to actively reverse the imbalanced Canada-EU trade trajectory. Indeed, it will exacerbate the imbalance by curtailing the ability of governments to develop a more productive and innovative economy through active industrial policies. The CETA provisions prohibit attaching conditions to new investment and acquisitions, for example requiring firms to pursue some research and development locally or to process a certain amount of primary commodities within Canada. The agreement would also disallow provinces from using government purchasing power (procurement) to support local and provincial development (see Chapter 21, Article IV.6).

Canada's trade deficit with the EU

- Canada's exports to the EU continue to fall short of imports from the EU. Over the past decade, this trade deficit has fluctuated between $12 billion and $21 billion, and it is vulnerable to fluctuations in commodity prices. In 2013, Canada exported $33 billion in goods and imported $53 billion, leading to a $20 billion trade deficit. In

other words, Canada imported $1.6 worth of goods from the EU for every $1 of goods it exported. The record-high gold prices over the past decade mask the underlying bilateral trade imbalance between Canada and the EU. Gold accounts for 23% (2013) of the value of Canada's exports to the EU, down from 30% in 2012, but a decade ago gold only accounted for 5% of exports. The size of the trade deficit is highly correlated to the value of Canada's gold exports.[60] If it were not for historically high gold prices the ratio of Canada imports to exports would be in the range of 2:1. Canada is relying on gold to cover a large bilateral trade deficit with Europe.

- The Canada-EU trade pattern is clearly advantageous for the EU economy, benefiting as it does from access to secure and sustainable access to primary commodities. But this raises serious questions about the long-term impact on the Canadian "resource-based" economy as it becomes increasingly vulnerable to the depletion of non-renewable resources and the volatility of commodity prices.

Benefits of the CETA?

- The federal government's argument that the CETA will boost the economy by $12 billion and create 80,000 new jobs is highly questionable. The assertions are based on a study commissioned by the Canadian and EU governments to kick-start the CETA campaign. The study's economic modelling is based on unrealistic assumptions and does not take into account unemployment, trade deficits, international capital flows and fluctuating exchange rates, thereby dismissing many of the real world economic challenges trading economies face. According to Unifor economist Jim Stanford:

  The modellers had to go further, with more farfetched assumptions, to boost their prediction. They assume that invisible, unspecified non-tariff barriers will be fully eliminated by the CETA. They assume Canadian service providers will do as much business in Europe as European firms currently do. Finally, they assume Canadians will save a strong share of new income, all of which is invested in new capital here (thus spurring even more growth). This latter effect alone accounts for over half the predicted $12 billion. Given record consumer debt and growing hoards of corporate "dead money," this saving-and-investing assumption is downright bizarre.

The subsidiary claim that CETA will produce 80,000 new jobs is more than unrealistic. Remember, the CGE [computable general equilibrium] model assumes constant full employment. That's essential, because it prevents any loss in total output from a lack of competitiveness. The predicted GDP gains do not come from more employment, they come from higher productivity."[61]

- Indeed, the joint study upon which the government bases its claim of significant benefits makes no estimate of employment gains. Some have argued that the disproportionate benefit to EU imports following the removal of Canada-EU tariffs will result in the net loss of up to 50,000 jobs in Canada as sectors struggle to adjust.[62] When real world factors such as the changes in exchange rate are added into the equation jobs losses could reach as high as 150,000.[63]
- The federal government's claims further assume that the purported GDP gains will translate into higher household incomes. But the supporting documents are silent as to how the agreement would provide net benefits for workers and local economies. Wealth generated in Canada over the past 30 years has increasingly been captured by the highest income households while overall wages have stagnated. In other words, the historical record indicates if there are to be benefits from the CETA, they are unlikely to reach most Canadian households.
- A thorough and realistic assessment of the potential impacts of the CETA would need to address, along with the real economic issues, the social, health and safety, and environmental costs associated with the reduction of regulatory options and the curtailment of future public services associated with the CETA. It would need to examine the long-term consequences of Canada's reliance on the export of unprocessed non-renewable resources.

Auto Manufacturing

Jim Stanford, *Unifor*

Key Points

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- Even government reports such as the Canada-EU Joint Economic Study[64] acknowledge that European automotive exports to Canada will grow more substantially after a CETA than Canadian automotive exports flowing back the other way. This implies the existing large trade imbalance in this strategic industry will get wider, with negative implications for a Canadian industry that is still struggling to recover from the devastating impacts of the last decade. The existing bilateral deficit is likely to exceed $7 billion within a few years of the CETA coming into effect.[65] European brands have a much stronger starting share and level of customer acceptance in Canada's market than do Canadian-made vehicles in the European market. The 2013 market share for European-made vehicles was at least 100 times larger than the market share of Canadian-made vehicles in Europe. To the extent that companies producing vehicles in Canada experience greater sales in Europe, they are likely to meet that demand from European facilities, not Canadian plants. Other than niche or inherently North American vehicles (e.g. minivans and muscle cars) there will be little interest on the part of automakers in investing in major marketing and distribution efforts to sell Canadian-made vehicles in Europe.[66]
- On the other hand, European-made vehicles, largely concentrated in higher-end luxury segments of the new vehicle market, will gain a 6.1% price advantage as a result of the CETA, which will translate into incrementally new sales. Those imported products compete directly against several Canadian-made vehicles, including luxury vehicles such as the Oshawa-made Cadillac, Oakville-made Lincolns, the Chrysler 300C assembled in Brampton, and the Cambridge-built Lexus. Canadian plants will lose some incremental sales volumes, as

their European competitors incrementally boost their market share. More worrisome is the impact that this incremental loss of product demand will have on the business case for future investments in Canadian facilities. Automotive stakeholders in Canada have been desperately working to confirm future capital spending in Canadian facilities, in the wake of market shifts, the high Canadian dollar, and the lure of low-wage Mexico. The CETA will not help this effort, and will incrementally hurt it.

Background

- Automotive trade is an important (and very lopsided) part of Canada's overall trade relationships with the EU. In 2013, Canada imported $5.6 billion worth of automotive products from the EU — almost four-fifths of that consisting of finished vehicles, the rest of parts — but exported back only $252 million worth of automotive products, mostly parts. The resulting bilateral auto trade imbalance of over $5 billion makes up one-quarter of Canada's total bilateral merchandise trade imbalance with the EU. Canada's auto imports from Europe have grown rapidly in recent years, as EU-based automakers expanded their market share in the Canadian new vehicle market. Auto imports from Europe grew by 128% between 1999 and 2013. However, Canada's auto exports to the EU plunged by 45% over the same time period, restrained by weak demand conditions in Europe, the high Canadian dollar, and the lack of market penetration there by Canadian-made vehicles.
- Automotive trade patterns are tied up closely with the structure of foreign investment in this industry, which is dominated by a small number of global automotive brands that produce and market their vehicles in many different parts of the world. There is a fundamental structural asymmetry in this regard between Canada and Europe that shapes the nature of bilateral trade. Most of the firms that produce vehicles in Canada also have manufacturing plants in Europe from which they meet almost all of the demand for their products from European customers. In contrast, no European automakers have significant investments or production presence in Canada, meaning that all of the growing demand for their brands is met through imports either from Europe or also, for several of those firms, from their newer operations in Mexico and the deep south of the United States.

- The lopsided nature of bilateral auto trade between the EU and Canada has contributed to the difficult economic conditions faced by the Canadian auto industry in recent years. Europe accounts for about one-third of Canada's large overall international auto trade deficit — a deficit which has clearly contributed importantly to the downturn in output, investment and employment experienced in Canada's auto sector over the last decade.[67] The CETA will cement this damaging, lopsided relationship and make it incrementally worse by cementing national treatment and market access principles, and by incrementally boosting imports from Europe. There will be no measurable increase in Canadian automotive exports going back to the EU, regardless of some unique provisions regarding rules of origin that have been negotiated into the draft CETA text.

Analysis of Key Provisions

- Chapter 3 of the CETA, dealing with National Treatment and Market Access for Goods, specifies that full national treatment will be accorded to imports from the other country (Article 4). This locks in the current damaging trade imbalance in automotive products and prevents Canada's government from taking proactive measures to address that imbalance.[68] This market access commitment confirms that the current state of affairs in this sector is both legitimate and permanent. This represents the first time that Canada has made this commitment in the strategically important auto sector with any major auto producer outside of North America. It signals an abandonment by government of its traditional willingness to manage trade relationships in automotive products to the benefit of Canadian production. This abandonment is cemented in Article 12 of the same chapter, which prohibits import or export restrictions in goods trade with some very narrow exceptions under Article XI of the GATT.

- Article 5 of the same chapter describes tariff elimination on traded goods in line with specific timetables listed in the CETA annexes. For the most important category of automotive trade between the two countries (finished vehicles with engines over 1 litre in capacity), tariffs are eliminated evenly over an eight-year period. (Canada's existing tariff on vehicles is 6.1%; the EU tariff is 10%.) For some other smaller categories of vehicles, including those with electric engines,

tariffs are eliminated slightly faster (six years). It appears that EU tariffs on imports of automotive parts, which currently range from 0 to 4.5%, are eliminated immediately, since there is no specific mention of auto parts in the detailed annexes, implying this sector is covered by the default schedule, which is immediate tariff elimination. Canada has no tariff on auto parts.

- Article 6 of Chapter 3 on goods trade prohibits the use of duty drawbacks as a tool to promote more domestic activity. Under a duty drawback scheme, a company that both imports and exports broadly equivalent products is required to pay duty only on the net difference between those flows. This provides an incentive for exports from domestic facilities, and helps to achieve two-way trade flows. Duty drawback policies have been used in the past as a tool in automotive industrial policy — the former Canada-U.S. Auto Pact was a specific, customized kind of duty drawback — but are explicitly prohibited under the CETA.

- Annex 1 to the CETA chapter on goods trade describes sector-specific rules of origin for a range of industries. The provisions affecting motor vehicles are unique (see p.64 of the annex). For the largest category of passenger vehicles (those with engines over 1 litre in capacity), vehicles must include at least 50% originating content to qualify for tariff-free access to the trading partner. That threshold rises to 55% after seven years. For other categories of vehicles, the content threshold is 55% immediately. If the U.S. signs a free trade agreement (TTIP) with the EU, then the threshold rises to 60% one year after that agreement comes into effect, with U.S. content cumulated with Canadian content for rule of origin purposes.

- There is a clear asymmetry between Canada and Europe regarding rules of origin, resulting from the fact that Canada is just one country whereas Europe possesses an integrated continental supply chain. It is thus much easier for Europe to meet any given domestic content threshold than Canada. Indeed, there are no Canadian-made vehicles possessing more than 50% domestic content; the tariff reduction under the CETA would be meaningless since no Canadian-made vehicles would qualify for the lower tariffs. To address this asymmetry, the draft text includes a "derogation" provision whereby for the first 100,000 vehicles flowing in either direction, a lower domestic con-

tent threshold will apply (just 30% domestic content measured by value, or 20% measured by net cost). This provision would expire one year after the U.S. enters an FTA/TTIP with the EU, since at that time Canada would be allowed to count U.S. content in its exported vehicles toward the threshold. The 100,000-vehicle quota for derogation of the rule of origin applies to both sides, although its real effect is on Canadian exports, since European-made vehicles can easily meet the 55% threshold. However, Canada exports fewer than 5,000 vehicles per year to Europe, so this seemingly large quota is mostly of symbolic value. EU negotiators even described it as "of political rather than economic importance so as to be able to present the car deal as balanced."[69]

- Chapter 20 of the CETA text (on Technical Barriers to Trade) includes a special section on Co-operation in the Field of Motor Vehicle Regulations. The final placement of this section in the CETA treaty has not been determined yet; it may appear somewhere else other than Chapter 20. The language for this section includes seven broad sections on pp. 91–97 of the text. The two sides make a joint commitment to improving vehicle safety and environmental performance, pledge more co-operation in this field (including research), and agree to meet at least annually to review regulatory issues related to motor vehicle production, sale, and use. The most important feature of this agreement is that Canada accepts 17 regulatory standards dealing with vehicle lighting systems, noise standards and bumpers currently listed in a schedule developed by the United Nations Economic Commission for Europe (UNECE, specified in their schedule WP.29[70]). Nominally this is portrayed as a global regulatory benchmark but it reflects European practices. This is the first time a NAFTA member, or any major global auto-producing jurisdiction outside of Europe, has agreed to accept the European regulations as their own, and it sets a significant precedent regarding regulatory harmonization in other areas. Canada also agrees to explore incorporating the European standards in eight other areas, and to provide justification if it decides not to do so.

Marine Transport

Karen Cobb, *Unifor*

Key Points

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- The CETA would have significant negative consequences on the Canadian marine transport sector, including lost jobs in domestic freighting. A coalition of Canadian organizations has formed a committee called The Canadian Maritime and Supply Chain Coalition (CMSCC) to raise public awareness of these concerns.
- Clauses in the CETA would amend the *Coasting Trading Act* to weaken existing Canadian cabotage laws, which currently provide that all ships conducting shipping between Canadian ports must be flagged in Canada with crews trained and certified in Canada.
- The CETA provisions for intra-coastal shipping include the following:
    - The CETA will allow EU-based or EU-owned firms to ship empty containers between ports in Canada on a non-revenue basis by using vessels of any registry.
    - The CETA will allow the shipping of freight between the Ports of Halifax and Montreal on EU-registered vessels. This includes both bulk and container cargo for continuous service using vessels on EU first registries, and containerized on a single voyage where it is part of an international leg using vessels on EU first or second registries.
    - The CETA will allow EU contractors to bid on any federally procured dredging contracts exceeding the procurement thresholds for construction services (5 million SDR or about $8 million).
    - The CETA will allow EU contractors to bid on private dredging contracts of any size.

- European vessels are therefore allowed to ship cargo from Halifax to Montreal without any restrictions on origin of the crew, level of wages and/or working conditions. European operators would also be allowed to carry empty containers in Canadian waters and bid on dredging projects. Other provisions of existing cabotage rules in Canada are preserved by inclusion in Canada's list of exemptions, although past experience indicates that once a partial liberalization is initiated through a trade agreement, pressure builds strongly for further and eventually complete liberalization.
- Moreover, if these provisions liberalizing cabotage in marine shipping are approved in the CETA, it will likely open the door to similar liberalization of rules in air, rail, and road transport. The principle of Canadian content in internal shipping and transportation is challenged directly by the CETA provisions on marine shipping, with both short-term and long-term consequences.

Air Transport

Jordan Brennan, *Unifor*

Key Points

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- Air transportation between Canada and the EU was largely liberalized already by the 2009 Air Transport Agreement. The CETA does not seem to dramatically alter the provisions of that framework. Restrictions on cabotage and the 25% limit on foreign ownership of voting shares in Canadian airlines seem to remain in place, although the future of that limit remains uncertain given the 2009 changes to the Canada Transportation Act, and the government's signals about deregulating foreign ownership in airlines and more generally. The EU has noted and preserved exemptions to national treatment in several specific areas of this sector (ground handling services, airport operations, etc.) that will limit the impact on European ancillary air transport services.

Profile of Canada's air transport sector

- Canadian airlines already operate in a challenging international environment. Fluctuations in the Canadian dollar have not helped matters. A high Canadian dollar has made it difficult for Canadian airlines to win a fair share of the international air travel business. However, because fuel costs are one of the largest airline expenses, a lower Canadian dollar hurts the airlines insofar as fuel is denominated in U.S. dollars. Relatively higher taxes and airport fees on flights are also a competitive disadvantage insofar as it incentivizes Canadian air travellers to fly out of U.S. airports. Canada experiences a $3.5 billion annual deficit in international trade in air transportation services. A geographical breakdown of that deficit is not available from Statistics Canada, but Canada almost certainly experiences a bilateral deficit in air transportation with the EU.

- Trade and investment liberalisation in air transportation often manifests itself in the "open skies" concept. A full Open Skies policy would liberalize air travel by allowing international carriers to transport passengers and freight domestically. Currently, international carriers are permitted to take customers to two stops within Canada, but not pick up additional customers at the first of those stops. This prevents what is referred to as "cabotage." Air Canada supports the Open Skies concept. Major foreign carriers like Lufthansa are also in favour because it would give them access to the lucrative "MTV club" — the high traffic line running from Montreal through Toronto to Vancouver. Full Open Skies would exacerbate competitive pressures and allow even more non-unionized carriers into Canadian airspace, the combined effect of which would almost certainly be continued downward pressure on wages, benefits, working conditions and employment.

EU-Canada Air Transport Agreement (from the EU Commission website)

- This agreement was ratified in 2009 and replaced bilateral air services agreements concluded between 19 individual EU member states and Canada. The agreement includes a gradual phasing-in of traffic rights, mutual investment opportunities and co-operation on a number of issues including safety, security, consumer protection, en-

vironment, air traffic management and competition law. According to the European Commission, the agreement is “ground breaking” in the aviation world, providing for unprecedented liberalisation of traffic rights as well as foreign investment in airlines.

- Under the agreement, EU airlines and Canadian airlines are allowed to operate direct flights between any point in Canada and any point within the EU. The agreement also removes all restrictions on the number of weekly flights between Canada and the EU, and the capacity and prices offered by airlines. Further traffic rights will be liberalized gradually in parallel with the opening up of investment opportunities in airlines. The agreement will establish a fully Open Aviation Area between the EU and Canada. Nationals will be allowed to establish operations in the other Party’s territory and invest in each other’s airlines.
- The agreement also addresses safety, security and environmental issues. Both sides agreed to closely co-operate in order to mitigate the effects of aviation on climate change. In the field of safety and security, the agreement envisages the mutual recognition of each other’s standards and one-stop security. Specific provisions to improve consumer protection are also included.
- Some provisions of the agreement depend on Canada liberalizing its existing limits on foreign ownership of Canadian airlines, from the current 25% (of voting shares) to the 49% threshold currently in place in the EU. (In practice higher levels of foreign investment in Canadian airlines are already allowed through non-voting shares or holding companies.) The federal government amended the Canada Transportation Act in 2009 to *allow* Cabinet to raise this threshold, but so far Cabinet has not implemented these new rules.

Analysis of Key Provisions

- In terms of the scope of the CETA, it will apply to: (i) aircraft repair and maintenance services; (ii) the selling and marketing of air transport services; (iii) computer reservation system services; (iv) ground handling services; and (v) airport operation services (see Chapter 10, Article X.1.2 and Chapter 11, Article X-01.2[e]).

- "Airport operation services" does not include the ownership of, or investment in, airports or airport lands, or any of the functions carried out by a board of directors in addition to air navigation services. This seems to imply that means the activities of Canadian airports and NAV Canada, the firm that owns and operates Canada's civil air navigation service, would be exempt from the requirements of the CETA.

- Also excluded from the investment provisions are activities that pertain to the exercise of government authority, which is understood to mean an activity that does not have a commercial basis or would not be in competition with one or more economic operators.

- Also excluded are "related services in support of air services and other services supplied by means of air transport." This includes services where an aircraft is being used to carry out specialised activities in sectors including agriculture, construction, photography, surveying, mapping, forestry, observation and patrol, and advertising where this specialised activity is provided by the person that is responsible for the operation of the aircraft (see Chapter 11, Article X-01.2[e]).

- "Selling and marketing of air transport service" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution.

- Existing rights and obligations under the Agreement on Air Transport between Canada and the European Community will remain unchanged by the CETA.

- Parties to the agreement are obligated to provide national treatment, which means treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to its own service suppliers and services (Chapter 11, Article X-02). This does not mean that foreign nationals or firms are exempt from securing licensing, certification, registration, authorisation or the like.

- Parties are also obligated to provide for most favoured nation treatment when it comes to service suppliers and services of the other Party. This means treatment no less favourable than that it accords, in like situations, to service suppliers and services of any non-Party. With respect to a government in Canada other than at the federal

level, or with respect to a government of or in a European member state, the treatment accorded, in like situations, by that government in its territory must apply to services or service suppliers of any third country (Chapter 11, Article X-04).

- The market access (Chapter 11, Article X-05) provision eliminates restrictions on the number of service suppliers (whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test), the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test, and the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or an economic needs test.
- It is unclear if or how this provision will alter Canada's existing foreign investment limits, including the existing 25% rule on foreign voting equity ownership of airlines, or "net benefits" test.
- The national treatment, most favoured nation and market access articles do not apply to local government. Nor do they apply to national or sub-national levels of government as set out in Annex I or to sectors or sub-sectors as set out in Annex II (more on this below).
- And finally, courier services are subject to the provisions of Chapter 11 on Cross-Border Trade in Services, and Chapter 10 on Investment, subject to applicable reservations as set out in the Parties' schedules (see section on Postal Services by Kathie Steinhoff). This does not include the grant of air traffic rights to courier service suppliers. Such rights are subject to the Agreement on Air Transport between Canada and the European Community and its Member States.

Annex I: Reservations for Existing Measures and Liberalization Commitments

- Under "supporting services for air transport" and "rental of aircraft," the EU outlines reservations pertaining to aircraft, operating licenses and computer reservation systems, for example, but the language is complicated and hard to interpret (Annex I, pp. 7–8). For ground handling services, establishment within the EU area may be required. The level of openness of ground handling services depends on the

size of airport. The number of providers in each airport may be limited. For "big airports" this limit may not be less than two suppliers. This does not affect the EU's rights and obligations under the EU-Canada Agreement on Air Transport. For airport operations, establishment within the EU is required. Airport operation services may be subject to individual concession or licence from public authorities.

- There are a number of reservations pertaining to the ownership and operation of civilian aircraft and for ground handling services in Belgium, but they do not seem significant (see Annex I, pp. 23–24). Likewise, Polish aviation law limit foreign participation in airport operation services to 49 percent (Annex I, pp. 129–30).

Annex II: Reservations for Future Measures

- Under "maintenance and repair of aircraft," the EU (minus Hungary, Estonia, Austria, Latvia and Poland) "reserves the right to adopt any measure with respect to requiring establishment or physical presence in its territory and prohibiting the cross-border provision of maintenance and repair services of aircraft and parts thereof from outside its territory" (Annex II, p. 10).
- Under "service auxiliary to air transport" and pertaining to the most favoured nation reservation, the EU "reserves the right to adopt or maintain any measure which accords differential treatment to a country pursuant to existing or future bilateral agreements relating to the following Auxiliary Air Transport Services: (a) the selling and marketing of air transport services; (b) computer reservation system (CRS) services; and (c) other services such as ground-handling and airport operation services. In respect of maintenance and repair of aircrafts and parts, the EU reserves the right to adopt or maintain any measure which accords differential treatment to a country pursuant to existing or future Article V trade agreements (Annex II, p. 15).
- Other less significant reservations include Denmark's reservation of the right to adopt or maintain any measure with regard to the provision of airport guard services (Annex II, p. 48). In Lithuania, maintenance and repair services of rail transport equipment are subject to a state monopoly (Annex II, p. 88).