The EU-Canadian Comprehensive Economic Trade Agreement Negotiations

The EU-Canadian Comprehensive Economic Trade Agreement negotiations (known as the CETA) have demonstrated the ambition of these trade partners to construct a trade agreement of genuine strength and scale. The negotiations have also highlighted – if any re-emphasis of this point was necessary – the difficulty of concluding trade agreements, and of negotiating past complex and nationally important issues, even when all the political momentum and willingness is honed in on striking a an enduring deal. The CETA is clearly not as important as the US-EU trade deal is conceived to be. [See TTIP brief]. It does not have the magnitude of scale, nor does it have the important 'wow' factor that the EU-US deal will have (should it be successfully concluded). But the CETA is – now viewed from the perspective of the start of the US-EU negotiations – an important path-finding set of negotiations, a marker for what we can expect from the US-EU deal, and a provider of some important indications to the US-EU negotiators about what to avoid or how to tackle difficult subject areas. It also provides some good political sense on the importance of maintaining momentum: the CETA has missed several deadlines (November 2012, July 2013) and is now in danger of being superseded by the US negotiations. Assuming the EU-Canadian negotiations are concluded (and there is hope amongst legislators that this will occur after the 2013 summer recess) the EU has seen it as a soft template for trade negotiations with a whole manner of partner countries and regional blocs into the future, laying an important foundation for the EU's trading future.

The launch of CETA negotiations between Canada and the EU began with a Joint Study, commissioned by the EU and the Government of Canada in 2008, to assess the costs and benefits of a closer economic partnership. The commissioning of such a study demonstrated from the start that both Canada and the EU were looking to open up their economies and to find deep synergies with like-minded partners. The Joint Study highlighted the benefits of closer trade relations between the two negotiating parties and the assessments within it have been broadly supported by economists and interest groups. For example, an EU commissioned piece titled *Trade Sustainability Impact Assessment* argued that a fully liberalized trade relationship would increase the real GDP of the EU by 0.02% to 0.03%; while the estimated gains in Canadian GDP are calculated to be in the range of 0.18% to 0.36%.[1] However, since 2008, the global economy has undergone radical upheavals, and that politicians and officials on both sides of Atlantic failed to adequately understand or make provision for these shifts. In the case of the Joint Study, the underpinning assumptions made in its preparation have been undermined by the crisis in the Eurozone, the failure of the Doha negotiations to bring down tariffs and quotas meaningfully, and the proportionate strength of the Canadian banking sector.[2] That said, the shifting foundations of the Joint Study, upon which the initial negotiations were laid

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have not dimmed the enthusiasm of politicians and officials to pursue negotiations on the CETA, and the only sustained criticisms the initiative has faced have come from those with narrow sectional interests (for example, pharmaceuticals and agriculture) and from wider protest movements around intellectual property rights and environmental protection. It is interesting to note that this has struck a particularly fearful cord amongst EU-level politicians and officials who note privately, with dread, the loss of the ACTA (anti-counterfeiting trade agreement) provisions in July 2012 largely because of a strong activist campaign which had directly targeted the electoral fortunes of Members of the European Parliament. Fortunately for them, there is no such groundswell of opinion in Europe about the CETA; but there certainly is in Canada, where the negotiations around public procurement and foreign direct investment have occasionally made headline news and which in turn may partly explain the robust Canadian approach to negotiating. The low level of public engagement with these issues has also made the life of European governments and the European Parliament itself simpler: the European Parliament through its trade committee (INTA) has provided critical, but supportive, work in support of the European position on CETA, and has also worked closely with the negotiators, who have been drawn from the European Commission.

The delays to the negotiating timetable of CETA due – in large part – to protracted discussions on issues of agriculture (Canadian beef into the EU, and dairy into Canada) and government procurement have actually served to enhance the relevance and symbolic resonance of this treaty. That the EU-Canadian negotiations have been so delayed is perhaps a bad omen for the more complicated negotiations with the US, which will also strongly feature agriculture and public procurement.

The Trade Baseline

According to comparative Eurostat data on EU-Canada which is last comprehensively available from 2010, the EU-27 (as it was prior to the accession of Croatia this July) imported 9.2 billion from and exported 13.1 billion euros in commercial services to Canada with a trade surplus of 3.9 billion. Canada accounted for only 2.1% of imports and 2.5% of services exports from the EU. In terms of merchandise trade, Canada is the EU's 15th largest trading partner, accounting for 1.4% of total imports (€22.9 billion) in 2011. Canada was the EU's 14th largest export market, accounting for €29.6 billion and 1.9% of total EU exports in 2011.

More positively, in 2010 the EU was Canada's second largest trading partner and accounted for 12.0% of total goods imports (€38.6 billion) and 8.6% of total goods exports (€25.1 billion) by Canada. In terms of investment, in 2010, EU-27 outward stocks of foreign direct investment in Canada amounted to €197.4 billion and inward FDI stocks (Canadian investment in the EU) totaled €143.1 billion. So, although the trade figures may seem small compared to Canada's main trading partner, the United States, the EU is a very significant market and source of investment for Canada.

It is also important to note that while it has a small population (34 million) compared to the European Union's (500 million), Canada is a major trading nation. For example, Canada is a very significant producer of minerals and metals: its importance driven by

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scarcity, as is the case for small Middle Eastern nations. Canada is also the world's second largest producer of hydroelectric energy, third largest producer of natural gas, and sixth largest producer of oil. Canada is also notable for some areas of research-led technology industries and has produced space robotics and led in business telecommunications. Until recently, Blackberry (produced by Research in Motion, a company based in Ontario) was the number one mobile communications device in the business world, and their devices are still ubiquitous among business communities in the developed world. The EU and Canada have, therefore, reasonably strong trade resonances and the prospects for enhanced cooperation runs much wider than preferential terms for mineral resources and foreign direct investment. The trading baseline is one that fits well with the stated priority of both sides to focus on jobs and growth.

Issues to be resolved:

The CETA negotiations are too broad to allow for comprehensive coverage in a paper of this length. Hence, the focus here is on two broad areas: 1) issues that persist within the CETA negotiations, and 2) issues that have a strong resonance for EU-US negotiations. Some of these issues dovetail or overlap, but what is presented is a solid snapshot of the negotiations as they stand as well as the omen and lessons they provide for EU-US negotiations in the TTIP round.

Geographical Indicators

The EU has a very proactive approach to making special protections for what it sees as uniquely European products through geographical indicators (GIs), some 6000 of them currently, of which 5000 are for wines and spirits and more than 800 for food products. Part of this protection is to give special recognition to a region of geographical origin of a product, excluding areas in which exactly the same ingredients and techniques are used in the manufacture: the classic examples are sparkling wine from the Champagne region in France, Prosciutto di Parma hams, a multitude of cheeses, and pastry products such as the British ‘Cornish Pasty’. Allowing the EU to maintain these tight controls will hamper the import/export trade between the US/Canada in these particular items (particularly as described above). Such a change might well impact on the cultural exchange between the US and Canada, and many Canadian farmers (who are of European origin) are likely to be affronted that they are no longer allowed to use these traditional product names. It might be instructive to note, however, that in the more limited EU-South Korea FTA, 59 non-wine and spirits products were protected by GIs covering such items as hams, cheeses, sausages, olive oil, nougat, confectionary, beer, oysters, amongst others, and many of these products are also unproblematic for Canadian producers.

Rules of Origin

Canada’s already strong relationship with the United States makes a rules-of-origin (ROOs) agreement in the CETA incredibly difficult. The same will be the case in the US-EU negotiations, and so negotiators will need to adapt their positions if they are to create a shift in trading patterns. For Canada the ROOs are particularly important for automobile makers. The problem for Canada is that no matter how low a regional value content is

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agreed to it is so well integrated across Northern America that it is almost impossible to meet a target, whilst conversely European manufacturers keep their design and build activities mostly within the EU so even the highest tariffs are easy for European manufacturers to meet. Some of the minutiae of this comes down to 'cumulative counting' or the adding up of content from different countries to assess the percentages. Transparency around this issue (e.g. EU firms declaring the nations in which manufacturing occurs) is a key element of one version of the resolution. As for the EU-US negotiations, it will take considerable flexibility to resolve this particular issue.

The trade in services

Market access for the trade in services has often been cited by the negotiators as a major part of the gains possible in the CETA. The reality is there will be a very limited creation of new opportunities by the agreement. The reason for this is the entrenched and often complicated regulations that surround professional services, as well as a myriad of professional trade associations: all business-related barriers to entry. Such barriers can still be observed within the NAFTA area some 15 years on, and the relatively limited size of the Canadian market means that richer pickings can be found in the EU. Canada's robust performance during the recent economic crisis is another reason why services provide a problem for negotiators: its regulatory regime for financial services and diligent regulatory authorities can be seen as having shielded Canadian banks and financial service firms from the practices which led to the financial crisis.

Intellectual Property

The EU's focus on intellectual property in the CETA is centered on patents, particularly in the pharmaceutical sphere. European drug manufacturers have been strong in trying to seek extra time for patent holders (out to five and a half years of exclusivity, with an additional two years of data protection, prolonging the entire protection period to around 10 years), a particularity which goes directly against the interests of the large generics industry in Canada. Generics form a growing element of Canadian pharmaceuticals, as research-intensive pharmaceuticals have shrunk to pre-1988 levels. As a magnitude of scale, in 2009 Canada imported C$5.3 billion of pharmaceutical products from the EU and exported C$1.3 billion to the EU.[3] The EU has also requested a strong border-based confiscation regime for those who breach these rules. Canadian negotiators have countered that they are merely following their WTO obligations under Trade-Related Intellectual Property Rights (TRIPs) and so cannot concede to the EU's demands in this area. When counting in the estimated additional estimated $2.8bn that the moves would cost the Canadian health service and insurers: it is an almost impossible domestic sell.

Regulatory Convergence

Negotiations on regulatory issues were supposed to be a key part of the CETA process, which would result in much needed regulatory convergences on the standards governing the widest range of goods and issues. Given that the convergence process is relatively patchy in the EU itself (see in particular the EC Services Directive) and full convergence would produce tensions between nations following 'EU standards' or 'US standards' (as Canada does currently), it is more likely that this will be captured by a set of rules, rather than full convergence. These rules are likely to be based on pre-existing internationally

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agreed standards and practices and thus will merely embed those further. However, if in time the EU becomes a viable market for specific Canadian products, then some Canadian manufacturers might tool to meet European specific standards.

Agriculture

Agricultural trade is another key sticking point in the negotiations. Particularly difficult are the trade of Canadian beef into the EU and EU dairy into Canada. While protectionism plays a role, there is also crucial incompatibility in how health and safety is approached in the EU and in Canada. The predominant EU tests that affect Canadian produce are focused on the processes behind manufacture rather than the intrinsic safety or risk in the products. These have a disproportionate impact on Canadian produce (in particularly beef, dairy and genetically modified crops) and raise calls of French agricultural protectionism. In a similar fashion, European environmental activists and some officials have argued that the polluting effect of extracting oil from oil-sands should impact import under the EU Fuel Quality Directive, while the Canadian government and exporters have argued that these products should just be treated in the same way as any other oil product.

What Next?

The CETA should be concluded by the fall of 2013. Some more pessimistic voices in the European institutions think the negotiations may drag out to mid-2014, however. Regardless of precise timings, the negotiators have worked their way down to the last remaining entanglements in the negotiations and most recognize that the CETA is an important attempt at liberalizing this important trading relationship. There are many other dimensions to why the CETA is important: firstly, it cements the EU-Canadian bridge, reducing some of the reasons Canada would have to deepen its relationship with China; secondly, it provides an important back-drop and path-finding set of negotiations to the larger EU-US set, and forms a continued part of the EU's attempts to widen its trade partnerships with third parties. The actual economic impact of these deals has yet to be felt in numerical terms: the assumption persists, however, that they are a 'good thing'. The success or otherwise of the CETA will be measured in the economic indicators it generates, but also in the number of 'exceptional cases' that are granted in the late stage of the negotiations. A high number of these will nullify the positive impacts the CETA is likely to have, a low number will show that the stakeholder interests have been satisfied that they are not disadvantaged by the agreement. It is the skill of the negotiators and national and regional politicians to bring the settlement to life for those who will live it, so that they can see the advantages it will bring to them in the real world.

The implementation of the agreement goes wider than just selling the linking vision between theory and reality; it also involves the smooth and even implementation of the agreed measures. The EU has not been especially good at implementing its measures across all twenty-seven (and now twenty-eight) member states, the same can be said for Canada's diverse and influential regions. A strong part of the deliverable success of CETA will come at this much lower level in the implementation phase. As was noted above, there are strong challenges in the services sector with localized practices,

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regulations and associations that mitigate away from market access – if these problems were to persist into the medium term then it would be a significant limiting factor.

Finally, the negotiations have not generated a large amount of political debate in Europe (aside from marginal concerns about privacy and intellectual property), whilst in Canada there has been a far more vocal debate, but not enough to generate political risk for governments (nor European Parliamentarians) on either side of the Atlantic. Whether this political apathy or acquiescence remains the case for the TTIP negotiations with the US is highly unlikely indeed. When it is concluded, the CETA will have provided both sides with an ambitious, sensible and workable trade agreement, but also provided the EU and the US (observing from the side) with good intelligence on what to expect in their negotiating round.

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[1] Colin Kirkpatrick et al (2011), A Trade SIA relating to the negotiation of a Comprehensive Economic and Trade Agreement Between the EU and Canada, European Commission.

[2] For example, the Joint Study simulation made an assumption that there would be the " full elimination of goods trade protection as captured in the GTAP database…for all industrial and agricultural sectors (including elimination of all tariffs and tariff-rate quotas; notably, no exception is made for 'sensitive sectors', notwithstanding that trade and investment liberalization initiatives often contain provisions that exempt certain such sectors from liberalization or circumscribe the applicable extent of liberalization" (Joint Study 2008, 53).

[3] Paul Grootendorst & Aidan Hollis, The Canada-European Union Comprehensive Economic & Trade Agreement: An Economic Impact Assessment of Proposed Pharmaceutical Intellectual Property Provisions. Journal of Generic Medicines 2011; 8(2):81-103.

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