



# STRATEGIC FILE

No. 9 (36), December 2013 © PISM

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## Trade Agreements across the Atlantic: What Lessons from CETA for TTIP?

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*Negotiations are ongoing for two of the most significant trade and investment agreements that the European Union has ever entered into. Both the Comprehensive Economic and Trade Agreement (CETA) with Canada and the Transatlantic Trade and Investment Partnership (TTIP) with the U.S. are set to be ambitious agreements, and are already causing controversy beyond the limits of the negotiating table. Given that the CETA talks are more advanced, they can provide some valuable and much-needed insight for TTIP, both in terms of process and substance. Nevertheless there are some issues, linked to the heftier geopolitical weight of TTIP, that CETA cannot help resolve.*

In October 2013, the EU and Canada signed a political understanding on the Comprehensive Economic and Trade Agreement (CETA), establishing the outcomes that will appear in the final text of the deal, which is currently being negotiated. CETA is significant for several reasons. For one, it is set to be the European Union's first trade deal with another G8 country. Moreover, it is expected to boost trade and investment between the EU and Canada, which is already at €113 billion, by 23%.<sup>1</sup> Finally, CETA is the precursor for another major trade deal—the Transatlantic Trade and Investment Partnership (TTIP), which is currently being negotiated between the European Union and the United States.

While the negotiations on the broad content of CETA have already been completed, TTIP negotiations are just getting into full swing. With talks for the two deals at different stages, it is an opportune time to consider whether any lessons for TTIP can be drawn from the EU-Canada deal. The process of CETA negotiations, but also the substance of the political agreement, and the public debate on the deal in Canada, can provide useful insight for Brussels and Washington, but also for EU Member States and politicians who have an interest in TTIP coming to a successful conclusion.

### **CETA Hints on the TTIP Negotiation Process**

In many ways, due to the volume of economic exchange it will cover—€800 billion in annual trade and almost €3,000 billion in investment stock—TTIP is set to be an unprecedented *sui generis* agreement. Nevertheless, the similarities with CETA are significant enough for the Canadian deal to inform the process of TTIP negotiations. In both cases, the EU is negotiating with a huge transatlantic ally, upon which it cannot impose its own standards and requirements. This makes the CETA and TTIP negotiations more similar to each other in terms of process than they are to other trade negotiations into which the EU has entered

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<sup>1</sup> European Commission, “Press Release: EU and Canada Strike Free Trade Deal,” 18 October 2013, [www.ec.trade.europa.eu](http://www.ec.trade.europa.eu).

(for example, with Korea, South Africa or Mexico). The federal structures of both Canada and the U.S. also significantly complicate the negotiating procedures for Brussels with both Ottawa and Washington.

The CETA negotiations were long, convoluted and complicated: diplomatic and technical preparations for the agreement began in 2007, and it took four years for a political agreement on the principles of the deal to be signed. Nevertheless, the broad strokes of the political agreement suggest that it will be a far-reaching and comprehensive deal, covering both tariff and non-tariff barriers—along the lines of what is hoped for from TTIP. Lessons that can be drawn from CETA will therefore be both negative (what *not* to do) and positive (what to emulate).

### *The Importance of Unity*

Canadian negotiators have claimed that the provinces have been firmly behind them during the negotiation process. However, some provinces—which were at the table during the initial talks but are not present for the technical negotiations—are currently refusing to vote CETA through, because of certain provisions in the political agreement which are proving unpopular (e.g., the opening up of local procurement markets and investor-state arbitration). Given the provinces' authority to refuse to enforce the deal, there is a danger that CETA will be stuck in limbo for some time. The situation is further complicated by the different stakeholders in each province—such as the beef and pork farmers in Alberta who are enthusiastic about the deal, and the dairy producers in Quebec who are opposed to it.

The current deadlock in Canada highlights the importance of the early establishment of unity in favour of TTIP among the 28 EU Member States and the 50 U.S. states. In the EU, there is broad agreement among Member States that a transatlantic deal is desirable, though France is the notable dissenter.<sup>2</sup> However, there is still time for disunity to develop as more details emerge about the content of the deal. In the U.S., there is currently broad bipartisan agreement in favour of a transatlantic deal on Capitol Hill. But ultimately, Representatives—who have to stand for election every two years, and who are deeply dependent on financing from partisan PACs (Political Action Committees)—will vote for or against TTIP in accordance with sentiment in their home state.

### *The Acceptance Process*

The issue of unity is related to that of the acceptance process. In Canada, the federal and provincial parliaments have a simple up or down vote on CETA. However, the provincial legislatures have been asked to pass motions supporting the deal in principle on the basis of the preliminary political agreement, which many argue does not contain sufficient detail to allow for informed decision-making. This situation has also led to accusations of a lack of transparency, which have undermined the CETA project, and fuelled misunderstanding and misrepresentation of the consequences of the deal (an example is the claim that it will increase provincial drug prices).

In the U.S., although legislators announced they had made significant progress in drafting the relevant bill in December 2013, the presidential administration has so far done very little to ensure it will obtain Trade Promotion Authority (TPA) from Congress. Passing TPA would ensure that the legislature votes up or down on TTIP, removing the risk of lengthy debates regarding individual elements of the agreement. However, there are already signs that the TPA debate risks becoming a discussion on the substance of TTIP as well as the TPP (the Transpacific Partnership), a deal that does not enjoy the same level of bipartisan support as its transatlantic counterpart. Already, some legislators have announced that the inclusion of intellectual property and currency manipulation protections in TPP will be *sine qua non* for their voting in favour of TPA.<sup>3</sup> The Canadian case shows that this is risky, given the difficulty of convincing legislatures to vote through trade agreements sight unseen.

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<sup>2</sup> For more information, see, e.g., M. Rostowska, "Ripping into TTIP? Debates Surrounding the Upcoming EU–U.S. Trade Negotiations," *PISM Policy Paper*, no. 19 (67), 9 July 2013, [www.pism.pl](http://www.pism.pl).

<sup>3</sup> E. Nawaguna, "U.S. Congress Could OK Trade Promotion Bill in Early 2014, Lawmakers Say," 10 December 2013, [www.reuters.com](http://www.reuters.com).

## *The Value of Transparency*

Canada's federal government has published a technical summary of CETA, sent representatives to meet with local legislatures to discuss the deal, and created a dedicated website outlining the benefits of the deal for Canadian citizens, businesses and provinces. Nevertheless, accusations of poor transparency regarding CETA have been levied at Ottawa, resulting in opposition to the motions supporting the deal that have been presented to provincial governments.

Brussels is acutely aware of the importance of carrying out a strong public relations campaign regarding TTIP. The European Commission has made efforts to promote awareness of the deal, including holding stakeholder meetings in Brussels, publishing online factsheets, and setting up a TTIP Twitter account. However, the difficulties surrounding CETA suggest that making information available is not sufficient, and that Member States should be encouraged to promote discussion on—and dispel myths about—TTIP. This will be crucial if TTIP is to succeed, as it was partly a lack of awareness that caused the mass protests that brought down the Anti-Counterfeiting Trade Agreement (ACTA) in 2011.

In a similar vein, Member States have expressed frustration with the European Commission for its poor communications during the process of negotiating the CETA political agreement. It appears that the EC was not forthcoming with the relevant government departments with regard to the deals it was striking with Canada on sensitive areas, such as agriculture. This is likely to put some Member States on the defensive vis-à-vis the TTIP negotiations. The Commission should seek to prevent such a situation by ensuring it communicates openly and regularly with the relevant national authorities during the talks.

### **CETA Tips on the Substance of TTIP**

The EU's trade and investment flows with the U.S. and Canada are very different in terms of magnitude. In 2012, the EU's overall trade in goods and services with the U.S. amounted to almost €800 billion, whereas its trade with Canada made up just over €88 billion. In 2011, overall EU–U.S. FDI stock came to €2,756 billion, compared to €359 billion in EU–Canada FDI.<sup>4</sup>

Nevertheless, the broad strokes of the EU's trade and investment with Canada and the U.S. are similar enough to make CETA informative for TTIP. The EU has a trade surplus for both goods and services with both the U.S. and Canada, and in both cases services make up a significant part of trade (37.1% of overall EU–U.S. trade and 30.4% of EU–Canada trade in 2012). Moreover, for both the U.S. and Canada, mutual foreign direct investment (FDI) with the EU far exceed trade: EU–U.S. trade represents the equivalent of 27% of overall bilateral investment stock, and EU–Canada trade amounted to around 24% of mutual FDI.<sup>5</sup>

### *Regulatory Issues*

CETA is set to contain several solutions to regulatory issues, including a provision allowing an EU standard-setting body to certify that a product complies with Canadian standards and vice versa. Other measures will facilitate mutual recognition of testing and certification results, and a formal mechanism that will facilitate joint initiatives between EU and Canadian authorities is in the works.

Regulatory issues are the core of TTIP negotiations. It has been well established that, given the low levels of tariffs currently in place between the EU and the U.S. (the average is around 3 per cent), the bulk of the gains from the deal will come from reducing so called behind-the-border hurdles to trade, such as regulatory discrepancies.<sup>6</sup> The solutions adopted in CETA suggest that, in the case of TTIP, an approach focusing on mutual recognition of standards rather than harmonisation would be possible.

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<sup>4</sup> Own calculations based on EU data, [www.ec.europa.eu](http://www.ec.europa.eu).

<sup>5</sup> Own calculations based on EU data, [www.ec.europa.eu](http://www.ec.europa.eu).

<sup>6</sup> See, for example, European Commission, "The Transatlantic Trade and Investment Partnership: The Regulatory Part," September 2013, [www.trade.europa.eu](http://www.trade.europa.eu).

## *Government Procurement*

CETA will open up EU procurement markets to Canadian companies, and Canadian public procurement to European firms at all levels of government to an unprecedented extent (there are even plans for Canada to create a single electronic procurement website compiling information on all available tenders). This aspect of CETA was particularly difficult to negotiate, given Canada's federal structure, and the importance its municipal governments attach to their ability to support local interests. As a result, CETA procurement rules will apply only to high-value contracts (such as goods and services contracts worth more than €216,000 for provinces and territories, and utilities contracts worth more than €5.3 million).<sup>7</sup>

Gaining better access to U.S. government procurement markets is one of the key priorities for European businesses with regard to TTIP. In particular, many object to the "Buy American" public procurement provision, which requires preference to be accorded to U.S. bids for federally-funded projects. Moreover, tenders organised by American states are subject to rules set by state legislatures, which often seek to build the local economy by prioritising home-grown businesses. This limits EU firms' access to the significant contracts available at state level in the U.S. (for example, California spends \$8 billion annually on public procurement). However, like in Canada, procurement is a significant defensive issue for American businesses and states. Close attention should be paid to the current deadlock in Canada, and to the steps that will be taken towards its resolution.

## *Energy*

It is the European Commission's position that, in the field of energy, trade agreements should improve market access and non-discrimination on the one hand, and promote sustainability on the other. The difficulty of achieving both these goals simultaneously is highlighted by the current controversy surrounding the EU's fuel quality directive (FQD).<sup>8</sup> The FQD assigns various emissions values to different types of fuel—such as oil derived from oil sands—to calculate compliance with its stated aim of reducing greenhouse gas emissions. This is decried as a new trade barrier by both Canada and the U.S., as Canadian oil sands are expected to be largely refined in the U.S. prior to export to the EU. Canada has reportedly raised the issue during CETA negotiations, and the U.S. can be expected to do the same during TTIP talks: Michael Froman, the U.S. Trade Representative, has already stated in Congress that the U.S. will attempt to rectify the situation through TTIP.<sup>9</sup>

Although CETA will not contain a separate chapter on energy, other provisions of the deal—such as those improving market access and easing temporary entry—will relate to the energy sector. The agreement's expected positive effect on EU-Canadian investment flows is likely to be particularly beneficial in the energy sector. Canadian companies have significant experience in the extraction of shale gas and other unconventional fuels. Investment by European companies in Canada (such as this year's Orlen takeover of TriOil Resources, a small firm specialising in shale gas extraction), could speed up the advent of shale gas energy in the EU, through the transfer of know-how. Canadian oil service companies would also benefit from better access to European oil projects, thanks in part to the lifting of visa requirements and mutual recognition of professional qualifications.

TTIP, on the other hand, is expected to contain a separate chapter on energy, although recent reports suggest the American side may prefer energy to be discreetly dealt with in other provisions.<sup>10</sup> European access to U.S.-produced liquefied natural gas (LNG) will be at the forefront of negotiations. This is due to European fears over lost competitiveness caused by higher energy costs in the EU, and the crude oil and gas export restrictions that currently apply in the U.S. These are usually lifted automatically, for any country with which the U.S. has an FTA, but as yet it remains unclear whether that will be the case for TTIP—there are suggestions that the deal will have to contain special provisions for the rule to apply.

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<sup>7</sup> "Technical Summary of Final Negotiated Outcomes: Canada-European Union Comprehensive Economic and Trade Agreement," [www.actionplan.gc.ca](http://www.actionplan.gc.ca).

<sup>8</sup> "Directive 2009/30/EC of the European Parliament and of the Council," 23 April 2009, [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu).

<sup>9</sup> S. van Rensen, "How an EU-US Free Trade Agreement Will Affect the Energy Sector," 20 November 2013, [www.oilprice.com](http://www.oilprice.com).

<sup>10</sup> "U.S. Trade Talks Could Deliver Cheaper Energy for Europe," 16 December 2013, [www.reuters.com](http://www.reuters.com).

## *Agriculture*

Agriculture was one of the last issues to be tackled during the preliminary CETA negotiations. In terms of tariffs, CETA is likely to benefit the EU thanks to the reduction of relatively high agricultural tariffs (e.g., almost €600 billion in EU wine exports to Canada currently face tariffs of up to 21.91 euro cents per litre).<sup>11</sup> The EU also managed to ensure the inclusion in CETA of Geographical Indications (GIs), which protect products such as Parma ham, the producers of which are currently unable to export to Canada due to the use of the “Parma” trademark there. However, in terms of quotas, Brussels conceded quite a lot. While Canada achieved the quota increases it wanted for beef (quotas more than tripled), pork (quotas increased twelve-fold), and sweet corn, European hopes for increased quotas for all dairy products, poultry, and eggs, were not met (the EU managed only a three-fold increase in cheese quotas).

The controversial CETA result on agriculture will doubtless inform the debate on TTIP in the EU. The perception that the Commission gave in to Ottawa on agricultural quotas in exchange for a better result in other areas is likely to inform the thinking on TTIP of Member States with a strong primary sector, such as France or Poland. In order to prevent a situation whereby the entire TTIP negotiation process is jeopardised due to a tougher approach from the European agricultural lobby, it is imperative that the Commission be as communicative as possible with Member States, and keep them abreast of the decisions being made during negotiations.

## *Intellectual Property Rights*

Given past concerns over what the European Commission perceives as infringements in Canada, intellectual property rights (IPR) are expected to be accorded a meaningful chapter in CETA, covering three main areas: GIs, pharmaceuticals and copyright. In the pharmaceuticals sector, Ottawa agreed to provide additional protection for products protected by eligible patents in Canada, but rejected the EU request to provide 10 years of data protection. In terms of copyright protection for original creative material, CETA will reflect the Canadian system. Given the strong public opposition to ACTA in Europe in 2011, the European Commission has been at pains to highlight that CETA will reflect the fact that the European Parliament rejected ACTA, and not contain internet provisions or criminal enforcement provisions.

IPR is also likely to be accorded a central place in TTIP. Given the importance of strong IPR for the U.S. economy (IPR-intensive industries support around 40 million American jobs), several senators have made their support for TTIP conditional on strong IPR protection provisions in the deal.<sup>12</sup> On the EU side, the focus during negotiations is likely to be on GIs, as it was during CETA talks. Awareness of the shadow of ACTA is also playing an important role in the process of TTIP negotiations: IPR has been a central topic in stakeholder forums, such as the Transatlantic Consumer Dialogue’s event held in October, and the Commission has released a factsheet outlining the differences between TTIP and ACTA.

## *Investor-State Arbitration*

According to the initial political agreement, CETA will include provisions on investor-state dispute settlement (ISDS). This will take the form of a procedural mechanism allowing investors from Canada to bring cases directly against EU Member States in which they have invested before an arbitration tribunal, and vice-versa. This has proved controversial, particularly among Canadian commentators, some of whom have dubbed CETA a “corporate bill of rights” as a result.<sup>13</sup> In November, 100 non-governmental organisations signed a transatlantic statement calling for policy makers at all levels of government in Canada and the EU to block the agreement until the investor-state arbitration element is removed.

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<sup>11</sup> Poland should especially benefit from reduced tariffs on chocolate preparations (exports of which to Canada are worth €9.4 million annually), which come under tariffs of 6%, but also retail food preparations for infants (€2.9 million), sugar confectionery (€1.3 million), and fruit and vegetable juice (€1 million), all of which come under tariff rates of 9.5–10%.

<sup>12</sup> “Hatch Statement at Finance Committee Hearing Examining the Opportunities & Challenges of the Transatlantic Trade & Investment Partnership,” 30 October 2013, [www.finance.senate.gov](http://www.finance.senate.gov).

<sup>13</sup> See, for example, Y. Engler, “Canada–European Free Trade Agreement: A Corporate Bill of Rights,” *Global Research*, 12 November 2013, [www.globalresearch.ca](http://www.globalresearch.ca).

In the case of TTIP, the benefits of ISDS are likely to be marginal, as fear of unfair treatment does not discourage U.S. companies from investing in the EU or vice versa. Given early signs that the popular reaction to ISDS in TTIP may be similar to the strong opposition elicited by its inclusion in CETA, and suggestions that it could be particularly destabilising in the energy sector, it would be advisable to consider omitting investor-state arbitration from the EU–U.S. agreement entirely.

## **Conclusions, and the Road Ahead**

There are several important lessons from CETA for Europe and the United States, relating to the process of TTIP negotiations. In the EU, the Commission must strive to communicate as openly as possible not only with stakeholders, but also all branches of national governments, to prevent resentment and misunderstandings regarding the deals that will be struck during the TTIP negotiations. In the U.S., the White House ought to take a more hands-on, direct approach towards getting Representatives and Senators on board with the deal. In particular, the presidential administration should apply for TPA as soon as possible, to prevent the debate on trade authority from becoming a discussion on TTIP and TPP.

Several lessons on substance can also be drawn from the solutions found in CETA. For instance, it appears that mutual recognition of regulations should trump regulatory convergence in TTIP. Moreover, controversies surrounding public procurement, energy, agriculture, IPR and investor-state arbitration provisions in CETA should inform negotiators as well as Washington and Brussels in term of what steps could be taken to prevent legislative deadlock and public opposition to TTIP.

However, the geopolitical element of the EU–U.S. agreement means that there are some lessons that cannot be drawn from CETA. In short, TTIP has the added burden of being seen by many in Brussels and Washington as a tool for reuniting the EU and the United States. Some policy makers and commentators in Europe and the United States hope TTIP will serve as an antidote to the so called pivot to Asia, or at the very least demonstrate that the U.S. is to some extent undergoing a “re-pivot to Europe.” Others see it as an important element of the response to the perception of the decline of the West, which has emerged among developing and emerging countries. This perception of TTIP is shared by members of the current administrations, and goes far up the hierarchy of government: in November, Assistant Secretary of State Victoria Nuland called for a “transatlantic renaissance.”<sup>14</sup>

This added geopolitical weight may, on the one hand, galvanise much-needed political will in support of TTIP. On the other hand, however, it also politicises the deal, which makes it more controversial and puts it at risk from potential opponents. In particular, the policy making and expert communities are worried about potential actions by countries such as Russia, China and Brazil, which may scupper the deal. This is as worrying for business as it is for the political establishment. German industry, in particular, is worried about TTIP being perceived as an “anti-Asian” or “anti-Chinese” agreement, given the importance of East Asia for German business.

In order to avoid such opposition, TTIP must be presented as an open agreement, with a clearly defined accession mechanism. This means that—as has been done in the case of the Transpacific Partnership (TPP)—it should be made explicitly clear that TTIP will be open to members other than the EU and the U.S. once the negotiation process has been completed. This should also help quell the worries of Turkey, Canada and Mexico, which are integrated with the EU and the U.S. in terms of trade, and which will be directly affected by TTIP.

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<sup>14</sup> V. Nuland, “Toward a Transatlantic Renaissance: Ensuring Our Shared Future,” 13 November 2013, [www.state.gov](http://www.state.gov).