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## The EU-Canada Free Trade Agreement: What is on the Table for Agriculture?

by

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#### Abstract

In October 2008 French President Nicholas Sarkozy and Canadian Prime Minister Stephen Harper announced that the EU and Canada would seek a free trade agreement and in May 2009 negotiations on a Comprehensive Economic and Trade Agreement (CETA) commenced. There have been a number of negotiating sessions since then and good progress has been reported. One of the more difficult sectors was expected to be agriculture. This paper outlines the major opportunities for expanded agricultural trade between the EU and Canada as well as those areas where the negotiations are expected to be particularly difficult. Topics include, subsidies, sanitary and phytosanitary barriers to trade, tariffs, tariff line adjustments, regulatory harmonization, protection for geographical indications, barriers to trade in genetically modified products and TRQs in the Canadian dairy sector. A section on opportunities and concerns of particular interest to the agri-food sector of the UK is included. The paper concludes with a discussion of the expected outcome and degree of trade expansion that will follow a successful conclusion to the negotiations.

Keywords: agriculture, Canada, international trade, negotiations, European Union

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#### Introduction

In May 2009 at an EU-Canada summit in Prague the commencement of negotiations on a Comprehensive Economic and Trade Agreement (CETA) between the European Union (EU) and Canada was announced. By early 2012 there had been nine negotiating sessions and both parties are committed to concluding and agreement by the end of 2012. Of course, as with many trade negotiations, some deadlines have already slipped and successfully concluding the agreement in 2012 may be optimistic. With the Doha Round of multilateral negotiations at an impasse, and with little prospect for renewed progress, preferential trade agreements have become the mechanism for attaining the benefits of trade liberalization (Kerr, 2011). With economic growth stagnating in the wake of the global financial crisis which began in 2007, engines of economic growth are scarce, and with few domestic policy options available, governments have been increasingly looking to external opportunities to shift their economies out of their economic doldrums (Kerr, 2012). Unlike the economic depression of the 1930s where the response was large scale tit for tat implementation of protectionist policies, there have been strong commitments at G-8 and G-20 meetings to resist mounting protectionist pressures. By and large those commitments appear to have been honored (Viju and Kerr, 2011). In such circumstances, a trade agreement between the EU and Canada would appear to be a natural avenue to pursue.

The EU has a long tradition of engaging in the negotiation of preferential (i.e. better than World Trade Organization) trade agreements with its trading partners. There are only eight countries that the EU does not have such an arrangement; Canada is one of them. The US and India are other examples. A trade agreement with the US is likely too difficult politically and the EU is currently negotiating with India (Khorana et al, 2010). As many of the opportunities

available from reducing trade barriers have already been exploited by the EU through its multitude of existing trade agreements, the Canadian market is one of the few major markets where a new preferential agreement could provide considerable gains from trade. In the past, the EU showed little interest in having an agreement with Canada – one suspects that this reticence arose out of fears that Canada could be a conduit into the EU for US economic interests given Canada's close economic relationship with the US through the North American Free Trade Agreement (NAFTA). Such is the economic malaise in the EU that such worries may have waned, and just the opposite, the EU may view Canada as a potential conduit to the US market.

For Canada, preferred access to the EU's market of 500 million relatively wealthy consumers is perceived as a major prize. It would complement the preferred access Canada has to the large US market through NAFTA as well as act as a counterweight to Canada's heavy dependence on trade with the US. Canada has long had as a goal, diversifying its trade away from the US (Clement et al., 1999).

Economic relationships between the EU and Canada are characterized by strong two-way trade and investment. The EU represents Canada's second-largest trading partner, after the US, with exports to the EU valued at €40 billion and imports from the EU amounting to €47 billion in 2008. Canada, however, ranks only 11<sup>th</sup> on the list of EU trading partners. The EU is the second largest source of foreign direct investment (FDI) in Canada (€100 billion in 2008). Canada is the EU's third largest destination and fourth largest source of FDI (21.4% of Canadian FDI abroad) (Foreign Affairs and International Trade Canada, 2009).

There is a considerable degree of inter-industry trade between the EU and Canada.

Machinery and transport equipment is the largest category for trade. Canada's main imports from the EU are concentrated in transport equipment, crude materials and manufactured goods. More

than 60% of EU imports from Canada consist of manufactured products such as machinery, transport equipment and chemicals. Canada runs trade deficits with the EU in most industries.

In October 2008, the EU and Canada released a joint study entitled Assessing the Costs and Benefits of a Closer EU-Canada Economic Partnership, which outlines important benefits for both sides that could arise from a closer economic partnership. The results (0.08% increase of the EU GDP and 0.77% increase of Canada GDP), however, were based on the assumption that the Doha Round of negotiations would be completed and be successful. Based on the joint study, in March 2009, the EU and Canada released the Joint Report on the EU-Canada Scoping Exercise, which summarizes the main areas included in the negotiation agenda: trade in goods and services, investment, government procurement, regulatory cooperation, intellectual property, temporary entry of business persons, competition policy, labour and environment. Some of the predictable sensitive issues that will challenge the CETA negotiations between Canada and the are ship building, alcoholic beverages, trade remedies, health and safety standards, environmental regulations, intellectual property, government procurement and, of course, agriculture.

### **Agriculture in the CETA negotiations**

Trade negotiations surrounding trade in agricultural products have consistently been difficult through recent history. The major reasons for the reluctance to open agricultural markets to imports do not lie directly in international trade, but rather in the broader forces that have affected the sector over the last century. The major force affecting the agricultural sector has been technological change. This technological change has had three major facets: (1)

particularly the technical annex.

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<sup>&</sup>lt;sup>1</sup> Of course, the protection of agriculture under the British "corn laws" was a major spur for the first important trade liberalization in the 19<sup>th</sup> century and one of the underlying motivations for Adam Smith's *Wealth of Nations* in 1776. For a discussion of some facets of agricultural trade liberalization in the 19<sup>th</sup> century see Kerr and Forgrave (2002) –

mechanization whereby animal and human exertion has been replaced by machinery; (2) the application of modern chemistry to agriculture in the form of fertilizer, herbicides, pesticides, etc. and; (3) the use of modern genetic practices in plant and animal breeding. The pace of technological improvement has been long term with small improvements constantly being implemented. This technological change has been biased in that it has been labour saving. As a result, the agricultural sector in developed countries has been in constant disequilibrium with a need to shed both farm workers and farmers. Long term falling prices have been the mechanism that drives the inefficient out of agriculture. It has also meant low farm incomes. Farm groups have campaigned hard and effectively for governments to intervene to slow this process down. Hence, the focus of agricultural policy for a century has been to support the retention of farmers in the sector. Agricultural trade policy has always been seen as a contributor to this more general goal of agricultural policy whereby food imports are seen as bad because it means less of a need for farmers while exports are good because it means more farmers.

As a result of this view of agricultural trade policy, trade in agricultural products was largely exempt from the trade rules of the General Agreement on Tariffs and Trade (GATT) from 1947 until 1995. Agriculture was brought under the GATT rules in the Uruguay Round negotiations (1986-1994) which led to the formation of the World Trade Organization (WTO); but the difficult negotiations on agriculture almost led to the failure of the negotiations (Gaisford and Kerr, 2001). Difficulties over agriculture have also been a major stumbling block in the Doha Round negotiations that have failed to reach an agreement after more than a decade.

The Common Agricultural Policy (CAP) of the European Union represents a classic case of trade policy being harnessed to a general agricultural policy designed to eschew imports and encourage exports (Gaisford et al., 2003). Canada, as a large agricultural exporter, has long

wanted better access to the EU agricultural market (Kerr and Hobbs, 1994). Of course, Canada has its own protected sectors, particularly in dairy and poultry, where it has fought tenaciously to restrict imports (Gifford et al., 2008; Barichello et al., 2007). More recently, the EU's restrictive policies toward genetically modified (GM) agricultural products, where Canada is a leading user and developer of the technology, have led to additional trade frictions (Viju et al. 2011). None of these trade concerns had been resolved prior to the CETA negotiations; hence the negotiations on agriculture can be expected to be difficult.

The substance of the CETA negotiations has been far from transparent and there has been little public analysis of the likely effects. Hence, even as negotiations are said to be well advanced, determining what is "on the table" by those not directly involved in the negotiations has been a major challenge, and remains largely speculative.

Agricultural products represent a major importing/exporting sector for Canada.

Agricultural exports to the EU are approximately €1.75 billion. Canadian agricultural exports to EU are mainly unprocessed commodities like grains, cereals and oil seeds. Canadian agricultural imports have exhibited a rising trend with an approximate value of €2.8 billion in 2008. The main agricultural imports from the EU are represented by processed foods and alcoholic beverages. The EU has been a significant net agricultural exporter to Canada for many years.

As suggested above the EU and Canada have a long history of supporting the agricultural sector by putting in place a range of governmental programs and policies and of protecting the sector through tariffs and non-tariff barriers. Less clear is the role that standards and a variety of sanitary, phyto-sanitary and technical regulations play in providing protection to the agriculture sector in both the EU and Canada. Legitimate regulatory policies can be as effective barriers to trade as those put in place for nefarious purposes. Thus, the trade in agricultural products is very

constrained and the actual trade level is far from its potential. According to Cameron and Loukine (2001), Canada would gain the most from an FTA with the EU if agricultural markets are completely open. They estimate the additional gains from the liberalization of agriculture would be between €30 and €3 million annually.

In terms of tariffs, although both, the EU and Canada, have low *most-favoured-nation* (MFN) average tariffs on industrial goods (3.7% for Canada and 3.9% for the EU), food and agricultural products represent a product grouping that still faces high tariffs. Overall, Canadian tariffs on imports from the EU have decreased on a trade weighted basis, but access to Canadian supply managed products such as dairy, eggs, turkey and chicken remains highly restricted.

These products are subject to tariff rate quotas (TRQs) with generally prohibitive out-of-quota tariff rates, in the range of 100% to 250%, and small TRQ quantities, from less than 3 to 10% of consumption (Barichello et. al, 2005). On the other hand, even though the EU tariff rates for agricultural products have been lowered as a result of the Uruguay Round Agreement on Agriculture, they are still high. In fact, these are the only major product classifications that face tariff rates in excess of 35% (54% for dairy products).

Regulations have long been recognized for their potential to be used to inhibit, restrict or eliminate trade in agriculture and food products in response to protectionist motivated lobbying of politicians. Traditionally, the lobbying for this form of protection has come from producers in importing markets seeking relief from foreign competitors – those with a vested interest in import competing industries. In more recent times, particularly (but not exclusively) in the EU, the set of individuals and groups seeking regulatory trade barriers has expanded to include some consumers and environmentalists, among others (Isaac, 2007; Hobbs, 2007, Kerr, 2007).

Controlling the use of regulatory barriers for nefarious purposes, however, is complicated by the

fact that the regulations often have a legitimate purpose. For example, governments have an obligation to protect their populations from food safety hazards no matter what their source — border regulations to reduce the risk of such hazards can clearly be legitimate. Similarly, governments have a duty to protect their citizens from fraud, including falsely labelled food products originating outside the country. Thus, the task of those negotiating trade agreements is to put in place systems that can accommodate legitimate regulatory barriers while restricting the use of such barriers for nefarious purposes — but this is not an easy task.

In the Uruguay Round which concluded in 1994 – the rules on non-tariff barriers for trade in agricultural products were divided into two separate WTO sub-agreements. These are the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). The SPS agreement made science the justification for the imposition of these barriers (Isaac, 2007). There have been, however, some major disagreements between Canada and the European Union regarding the use of SPS measures since the agreement came into force. The disagreements relate to both the science itself and whether or not science is to be the sole, or a contributing, factor in the establishment of SPS import regulations (Smyth et al., 2009). The TBT agreement deals with technical regulations that do not fall within the ambit of the SPS agreement. For food and agricultural products, one of the major contentious areas is labelling requirements for imports. Over the last few years there has been a rise in consumers' interest in obtaining information regarding credence attributes of the goods in their markets – animal welfare, the use of child labour in production, the use of GM in production, whether crops were produced in an environmentally sustainable fashion, whether pesticides were used in production, etc. The TBT agreement is very clear, however, that import labels cannot be required on the basis of how a product is produced (e.g. in an animal welfare friendly manner) (Hobbs,

2007). Labels can be required only if the final product is discernibly different – a consumer, however, cannot determine by inspection if the meat they purchase was raised in an animal friendly way or not.

Differing product standards between countries can act as barriers to trade. For example, the EU requires that to be accepted as organic products in its markets, exporters must have a national standard for organic products and that standard must be acceptable to the EU – it does not mean that the standard must be harmonized with the EU standard (Sawyer et al., 2008). Until recently, Canada had no national organic standard and faced exclusion from the EU market. Canada did develop a national organic standard – but at a considerable cost. As trade in agrifood products is comprised of a rising proportion of processed foods, standards become increasingly important in the governance of trade.

Barriers to market access, however, are not homogeneous with regard to the motivation for their imposition. Some tariff impediments faced by Canadian products attempting to enter the EU market are required to maintain the integrity of the remaining EU export subsidies (Gaisford and Kerr, 2001). Thus, lowering barriers to market access in these situations will first require that the question of export subsidies be effectively dealt with multilaterally at the WTO; but the Doha Round remains stalled.

There are, however, some areas where increased market access might be achieved even in the case of export-subsidy motivated tariffs. For example, the EU import tariff on beef products is in the 50 percent range. One product that is negatively impacted by this tariff is Canadian bison meat. This is because the EU has no separate tariff line for bison – bison, presumably due to its genetic *closeness* to beef, is simply classified as beef for EU tariff purposes. This very large tariff has hindered the development of the market for Canadian bison in the EU (Hobbs et al.,

2000). Canada could seek agreement that the EU would create a new tariff line (Loppacher and Kerr, 2005) for bison meat. After all, there is no CAP tariff-requiring export subsidy regime for bison in the EU; in fact there is virtually no bison industry. With no protectionist *vested interests* in the EU, this may be an area where Canada might obtain concessions relatively easily. A significant opening of the EU market could give a considerable boost to the industry. There may be other niche market products that are caught in inappropriate tariff or regulatory regimes that are, as yet, not of sufficient importance to garner any official action from EU bureaucrats. Creating a *fast track* mechanism to handle tariff anomalies, regulatory vacuums and bureaucratic inertia within the CETA might yield considerable benefits for future industries – where vested interests do not (yet) exist in the EU or Canada.

While the 50 percent tariff on beef, for example, is sufficient to exclude Canadian beef from the EU market, beef represents a clear example of layered barriers to trade. Even if the high EU tariff on beef could be removed, movements of beef into the EU market would still be prohibited. This is because of the EU ban on imports of beef produced using growth hormones (Kerr and Hobbs, 2005). Thus, removing one layer of market access restriction will only lead to another binding constraint.

The case of beef produced using hormones is only the *tip of the iceberg* for a significant issue pertaining to market access to the EU. This is the problem the EU has in dealing with consumers, environmentalists and others requesting barriers to market access. The WTO's institutional trade architecture only recognizes the right of governments to respond to producers asking for protection (Kerr, 2010). In recent years, however, consumers, environmentalist and others have been asking – sometimes forcefully demanding – that the EU Commission impose trade barriers on a variety of products. Often, these products can originate in Canada. For

example, some consumers in the EU have been advocating an import ban on seal pelts from Canada and have been sufficiently persuasive to have the European Parliament legislate to limit imports. As discussed above, consumers in the EU were successful in having imports of beef produced using growth hormones banned – and in having the EU Commission accept retaliation rather than comply with a WTO disputes Panel ruling (Kerr and Hobbs, 2005). As suggested above, the latter, while certainly within the EU's rights under the WTO, is an unprecedented action. Environmentalists and some consumers in the EU have been vociferous in their opposition to imports of GM products. Green labelling, leg-hold traps, organic standards, animal welfare and a wide range of other issues have led to calls for restrictions on imports. In the absence of any direct provisions in the WTO to deal with such requests for protection, the EU has resorted to, at least from the Canadian viewpoint, the nefarious use of SPS measures. The WTO's SPS agreement enshrined science as the basis for imposition of trade barriers. Agreement on how to operationalize science-based decision making has, however, proved elusive – with the US and Canada (among others) ranged on one side of the debate and the EU (among others) on the other (Smyth et al., 2009). Canadian genetically modified canola has been a major casualty of this disagreement but wider adoption of GM technology – where Canada is recognized as a world leader – has been inhibited and research on GM-crops slowed due to market access issues in the EU. There has been similar pressure by consumer groups and others over TBT issues such as animal welfare, green labeling, etc. but, thus far, EU decisions makers have been less inclined to acquiesce to protectionist requests – but the pressure is intense and, hence, no reductions in current barriers can be expected. In any case, bilateral exceptions could not be made for Canadian products under the SPS or TBT because other countries could claim discrimination – and the SPS and TBT agreements are founded on the principle of non-discrimination (Isaac et

al., 2002). Thus, little that Canada might like to achieve on market access can actually be achieved in a bilateral agreement. Consumer angst in the EU over GM foods, hormones, animal welfare etc. shows no indication that it is abating and the issue of how to deal with non-producer groups' requests for protection remains *off the negotiating table* at the WTO; hence no liberalization in these important sectors for Canada can be expected from the Canada-EU agreement.

Any significant economic-based opportunities for EU agriculture and food exporters probably lie where Canadian trade barriers are the highest – and where Canadian opposition to trade liberalization is the most vociferous – those areas where supply management is the Canadian domestic policy. Access to poultry markets is unlikely to be a major area of interest for the EU – although there might be some niches where specialty products could benefit from lower barriers to access. Dairy products are where the EU would like to gain better market access – in particular specialty cheeses. The EU has long chafed under high tariffs and other market access restrictions for their differentiated cheeses. The Canadian pallet continues to mature in this area as the population becomes more wealthy and diverse. It is a complement to the expansion of consumption of better quality wines. The EU can see opportunities for market growth.

Resistance to increasing market access is, however, strident among Canadian dairy producers. They have successfully defended supply management in other bilateral negotiations like the Canada-US Trade Agreement (CUSTA) and the North American Free Trade Agreement (NAFTA) as well as during the Uruguay Round and the current Doha Round (Barichello et al., 2007). Any concessions on market access in the Canada-EU agreement would be viewed as the *thin edge of the wedge* by supply management advocates. Given the political sensitivity of the issue in Quebec and the oft-demonstrated effectiveness of the Canadian dairy lobby (Skogstad,

2008), market access for dairy products is likely to reflect the institutional *status quo* – in other words the survival of supply management will not be threatened by whatever is agreed in the CETA.

This does not mean, however, that some increase in the TRQ quotas for some EU products could not be negotiated. This would require some, likely costly adjustments in supply managed sectors. The Canadian Federal government might wish to provide compensation to reduce the pain of adjustment in order to win acceptance for the concessions on increase access through expanded quotas.

The EU also wants better market access for its wines. The main barrier, however, is the purchasing/sales practices of monopsonistic/monopolistic provincial government liquor boards in some Canadian provinces. Of course, this enters the realm of constitutional division of powers in Canada – this means that the Canadian government would have to garner concessions from provincial governments, something that is far from a sure thing.

Thus, within agriculture there is the making of a grand bargain – if Canada does not push for broad-based market access into the EU; the EU won't push for broad-based market access in Canada. There does not seem to be a compelling pressure from outside the sector in either country to trade off market access in agriculture to obtain something else – so the grand bargain is likely to stay within agriculture and any gains in market access are likely product specific and relatively limited.

There are, however, other areas of the negotiations that can potentially affect agriculture. The negotiators have agreed that *trade and the environment* will be directly included in the agreement – something that needs to be carefully assessed. In the NAFTA, for example, trade and the environment issues were isolated in a side agreement. At the WTO, trade and

environment issues are dealt with in the Committee on Trade and the Environment but little or no progress has been made in the Committee in over a decade. One suspects that the EU would like trade and the environment issues included directly in the Canada-EU agreement, at least in part for the precedent that it would set. For example, it has been a supporter of the Biosafety Protocol — an alternative set of rules for trade in genetically modified products. One of the reasons for this is that the EU has long chafed under the WTO rules pertaining to the precautionary principle.

The precautionary principle has been one of the mantra's of the environmental movement because they see it as an effective protectionist mechanism — and given there is no internationally agreed way to operationalize the precautionary principle for decision-marking purposes it is at this time wide open to protectionist abuse (Holtby et al, 2007; Phillips et al., 2006). Allowing trade barriers to be put in place for environmental reasons by the EU under its understanding of the precautionary principle could be very detrimental for future Canadian agricultural exports — in particular any products using new, transformative technologies such as, but not restricted to, agricultural biotechnology.

Another concern with including *trade and the environment* directly in the Canada-EU agreement relates to environmental tariffs<sup>2</sup>. Environmental tariffs would be used to penalize the export of products that are deemed to have been produced under less strict (less costly) environmental regulations. As environmental science is far from fully developed, ascertaining when environmental regulations are less strict (or less costly) in particular environmental situations will be fraught with difficulties – and disagreement. It is easy to imagine an institutional mechanism similar to that which exists in dumping – and indeed some people refer

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<sup>&</sup>lt;sup>2</sup>The terms Border Tax Adjustments (BTAs), Border Carbon Adjustments (BCAs) or Border Tax Measures (BTMs) are used to describe largely the same thing: border measures imposed on imports from countries with less strict environmental policy. The measures include a flat tariff, a tax or a requirement for the importer to purchase carbon credits. Even the terms environmental/carbon tariff or carbon border tax are easier to understand, the words tariff or tax are not compatible with the WTO (ICTSD, 2009).

to exports under *less strict* environmental regulations as *environmental dumping* – which is generally agreed to be wide open to protectionist abuse, if not captured (Kerr, 2010).

Clearly, there needs to be detailed attention given to the potential impact for agriculture in any environmental section that would be included in a Canada-EU agreement. Such a section could be potentially sufficiently damaging to agricultural exports so as to nullify any concessions obtained elsewhere in the agreement.

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