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MAKING THE MOST OF CETA

**A COMPLETE AND EFFECTIVE IMPLEMENTATION
IS KEY TO REALIZING THE AGREEMENT'S FULL
POTENTIAL**

PATRICK LEBLOND



**MAKING THE MOST OF CETA: A COMPLETE AND EFFECTIVE IMPLEMENTATION
IS KEY TO REALIZING THE AGREEMENT'S FULL POTENTIAL**

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67 Erb Street West
Waterloo, Ontario N2L 6C2
Canada
tel +1 519 885 2444 fax +1 519 885 5450
www.cigionline.org

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ABOUT THE AUTHOR



Patrick Leblond is a CIGI senior fellow with the Global Economy Program. He is an expert in global economic governance and international political economy, regional economic integration, financial regulation, and business and public policy. At CIGI, Patrick specializes in the investigation of international trade in the areas of the Canada-European Union Comprehensive Economic and Trade Agreement and the Transatlantic Trade and Investment Partnership. Alongside his CIGI appointment, Patrick is associate professor at the University of Ottawa's Graduate School of Public and International Affairs. Prior to his current professorship, Patrick was an assistant professor of international business at HEC Montréal and the director of the Réseau économie internationale at the Centre d'études et de recherches internationales de l'Université de Montréal. Patrick also holds the designation of chartered accountant and, before his career in academia, worked as a senior accountant and auditor at Ernst & Young in Montreal. He went on to work as a senior consultant, first in economic and financial consulting with Arthur Andersen & Co., and then later in business strategy consulting with SECOR Consulting.

ACRONYMS

CBSA	Canada Border Services Agency
CETA	Comprehensive Economic and Trade Agreement (Canada-European Union)
ESPD	European Single Procurement Document
EU	European Union
FTA	free trade agreement
GAC	Global Affairs Canada
GPA	Agreement on Government Procurement
ISDS	investor-state dispute settlement
MARCAN	Marketplace Canada
MRA	mutual recognition agreements
NAFTA	North American Free Trade Agreement
RCF	Regulatory Cooperation Forum
SCC	Standards Council of Canada
SDOs	standards development organizations
SMEs	small and medium-sized enterprises
SPS	sanitary or phytosanitary standards
TAXUD	Taxation and Customs Union
TBT	technical barriers to trade
WTO	World Trade Organization

EXECUTIVE SUMMARY

With the ratification process now under way, the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) is expected to come into force sometime in 2017. Immediately, business firms will be able to take advantage of the elimination of tariff lines on a large number of goods traded between Canada and the European Union (EU). However, there are a number of obstacles to trade and investment that will remain, notably those related to standards, rules, regulations and procedures. Differences and duplications between Canada and the European Union on such issues represent transaction costs for Canadian (European) firms doing or wanting to do business with or in the European Union (Canada). Therefore, both parties will have to work hard to reduce, if not eliminate, these obstacles once CETA comes into force. To do so in an effective and timely manner will require not only a strong commitment at all levels of government on both sides of the Atlantic, but also an extensive institutional architecture.

INTRODUCTION

On February 29, 2016, the Government of Canada and the European Commission published the CETA final text.¹ On July 5, the European Commission launched the ratification process by proposing the CETA text to the Council of the European Union.² As a result, CETA is expected to enter into force sometime in 2017.

Once CETA is in force, most tariffs on goods traded between Canada and the European Union will immediately come down to zero.³ This will be CETA's first major and probably most visible impact on transatlantic trade. However, this does not mean that politicians, civil servants and business people can congratulate each other on a job well done and move on to other things. Far from it! A lot of hard work remains in order to realize CETA's full economic potential. This is because CETA is much more than a traditional free trade agreement (FTA) focused on the elimination of tariffs. It addresses a much wider range of issues with a view to increasing trade, labour and investment flows between Canada and the European Union: for example, regulatory cooperation, labour mobility, investor protection, public procurement, electronic commerce and intellectual property.

If these so-called second-generation free trade issues are not dealt with in CETA's implementation phase,⁴ economic experts will most likely conclude that CETA has not performed according to expectations if they are asked to evaluate the agreement's economic impact 10 years after its entry into force. Such a conclusion will only reinforce the existing skepticism that many people have toward free trade and make it harder politically to negotiate new agreements or expand existing ones in the future. The problem in CETA's case, however, would not be the agreement itself but the effectiveness and completeness of its implementation.

The term "implementation" herein is not limited to the adoption of implementing legislation to make existing laws

1 See http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf.

2 For details on the European Union's ratification process, see Leblond (2016).

3 Close to 99 percent of tariff lines will be eliminated for qualifying goods.

4 Second-generation issues refer to "beyond-the-border" barriers to trade rather than "at-the-border" ones such as tariffs and quotas, which are considered first-generation free trade issues. For examples of such barriers between Canada and the European Union, see Ciuriak (2008).

conform with CETA's provisions,⁵ which is how the legal literature tends to define implementation. It means much more. It implies the adoption of concrete (i.e., practical) rules, standards and procedures (in Canada as well as the European Union) so that businesses can take advantage of provisions, such as the one that aims to facilitate the mobility of professionals, technicians and business people between Canada and the European Union. Without such concrete steps, CETA's willingness to reduce, if not eliminate, beyond-the-border obstacles to trade between Canada and the European Union will remain only *vœux pieux* (i.e., good intentions) and the economies on both sides of the Atlantic will suffer from unrealized economic gains.⁶

Making this kind of implementation possible requires a high degree of cooperation not only between Canada and the European Union but also between the various levels of government in each jurisdiction. In many instances, it also requires close coordination across departments or ministries within each level of government.

MAJOR CETA IMPLEMENTATION ISSUES

In traditional (i.e., first-generation) FTAs, implementation involves, first, the adoption of enabling legislation, as mentioned in the introduction. This is mostly to legally ratify the agreement and allow for the creation of and participation in the FTA's institutional features such as committees, working groups and ministerial commissions (for example, the North American Free Trade Agreement's [NAFTA's] Free Trade Commission). Second, tariff lines for goods imported from the partner countries are phased out, either immediately or gradually over several years. A third implementation issue associated with first-generation FTAs concerns the administration of the agreement's rules of origin provisions. Rules of origin serve to determine whether a good can be imported at the preferential tariff allowed by the FTA or at the non-preferential (i.e., normal) rate. For example, under NAFTA, 60 percent of the value of a good has to come from North America in order to enter Canada, Mexico or the United States tariff free. The big issue here concerns the calculation and documentation of this value in order for a firm to obtain the so-called certificate of origin for a given good, which allows the latter to cross one of the NAFTA borders duty free. The administration of rules of origin also involves the customs

procedure for such a good to be cleared effectively and efficiently. For instance, officials at border crossings have to be informed of the new rules and procedures in order to avoid unnecessary delays.⁷

The above implementation issues also apply to CETA, given that tariff elimination and rules of origin are part of the agreement. However, those issues are by now pretty straightforward and both Canada and the European Union have a lot of experience in that regard. As a result, they are not of much concern. Rather, it is the implementation of second-generation issues that are more worrisome, since it is in removing such beyond-the-border trade obstacles that CETA is likely to have its largest impact on the Canadian and European economies in the long run.

In terms of implementation, Debra Steger (2012, 109) defines these second-generation FTA issues as follows: "harmonization of standards and development of joint standards codes as well as mutual recognition of technical regulations, standards, and occupational qualifications." In order to harmonize, develop and mutually recognize standards, regulations and qualifications, what can be broadly termed regulatory cooperation is needed between Canada and the European Union. Scott H. Jacobs (1994, 15) defines regulatory cooperation as "new institutional and procedural frameworks within which national governments, subnational levels of government, and the wider public can work together to build integrated systems for rule-making and implementation, within the constraints of democratic values such as accountability and openness."

In other words, Canada and the European Union have to develop institutions and procedures that will allow Canadian firms to export products, services and people to the European Union (and vice versa) without having to undertake lengthy and costly steps (assuming they exist in the first place), which would represent significant obstacles to CETA's goal of liberalizing trade and investment between Canada and the European Union. For example, if an agricultural good has to obtain an official certification that it meets sanitary or phytosanitary standards (SPS) in order to be consumed in both Canada and the European Union, then it would make sense to develop a procedure whereby the enterprise producing this good would only need to have it certified once by one certification agency, which would be recognized by both Canadian and EU authorities. Otherwise, the need to go through two separate certification processes — one in Canada and one in the European Union — may prove too costly for a firm, which may then decide that exporting the good in question to the other CETA party may not be profitable after all. This would be a lost opportunity in terms of trade and value

5 De Beer (2012) refers to such legislation as an "omnibus treaty implementation statute." Examples of such implementation laws passed by the Canadian federal government in the context of existing trade agreements are the North American Free Trade Agreement Implementation Act, 1993, and the World Trade Organization Implementation Act, 1994.

6 For assessments of free trade's potential economic impacts between Canada and Europe, see Leblond and Strachinescu-Olteanu (2009), European Commission and Government of Canada (2008), and Kirkpatrick et al. (2011).

7 For more details on the administration of rules of origin, see Inama (2009, chapter 6).

creation (lost revenues and profits for the producer, lost variety for consumers, and so on).

The remainder of this section will identify the main areas of CETA that will require effective regulatory cooperation in order to realize the long-term benefits associated with the reduction and removal of beyond-the-border trade obstacles.

Technical Barriers to Trade

CETA's chapter 4 (article 4.1.1) defines technical barriers to trade (TBT) as "technical regulations, standards, and conformity assessment procedures that may affect trade in goods between the Parties." For instance, in CETA's case, Canada's regulations, standards or procedures with respect to a particular good should not discriminate against similar goods coming from the European Union, whereby Canadian firms have a competitive advantage over their European competitors in the Canadian market, and vice versa for Canadian goods in the EU market. One way to avoid such a situation is through the mutual recognition of standards and conformity assessment procedures. In other words, if a product is good enough for Canadians, it should be good enough for Europeans, and vice versa.

CETA's chapter 4 aims to reduce technical barriers to trade by incorporating most of the provisions found in the World Trade Organization's (WTO's) Technical Barriers to Trade Agreement (see article 4.2).⁸ However, this requires cooperation between Canada and the European Union. To that end, CETA's article 4.3 states:

The Parties shall strengthen their cooperation in the areas of technical regulations, standards, metrology, conformity assessment procedures, market surveillance or monitoring and enforcement activities in order to facilitate trade between the Parties, as set out in Chapter Twenty-One (Regulatory Cooperation). This may include promoting and encouraging cooperation between the Parties' respective public or private organisations responsible for metrology, standardisation, testing, certification and accreditation, market surveillance or monitoring and enforcement activities; and, in particular, encouraging their accreditation and conformity assessment bodies to participate in cooperation arrangements that promote the acceptance of conformity assessment results.

This means, for instance, that the Standards Council of Canada (SCC) will need to work with the European

Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs [small and medium-sized enterprises] and the European Standards Organizations⁹ in order for Canadian certification bodies to be accredited to offer the CE-marking certification¹⁰ to Canadian firms and their products. This will avoid the need for Canadian firms to have their products certified twice, with two sets of procedures and documentation. As already mentioned, such duplication in conformity assessment costs can represent significant obstacles to trade between Canada and the European Union. Obviously, EU accreditation organizations will also have to be allowed to offer European firms the National Standard of Canada stamp of approval on their products. CETA's Protocol on the Mutual Acceptance of the Results of Conformity Assessment provides the basis for Canadian and European cooperation in this matter. The Committee on Trade in Goods, as established by article 26.2.1(a), is responsible for managing the implementation of the protocol.

CETA's chapter 4 also requires Canadian and European standard-setting bodies (whether private or public) to "cooperate to the extent possible, to ensure that their technical regulations are compatible with one another" (article 4.4). More specifically, article 4.4.1 states:

To this end, if a Party expresses an interest in developing a technical regulation equivalent or similar in scope to one that exists in or is being prepared by the other Party, that other Party shall, on request, provide to the Party, to the extent practicable, the relevant information, studies and data upon which it has relied in the preparation of its technical regulation, whether adopted or being developed.

So, if Canadian standards development organizations (SDOs), which are accredited by the SCC, want to harmonize their standards to those that exist in the European Union, they will be able to obtain the necessary information and data by contacting their European counterparts. Of course, the same possibility will apply to EU SDOs that want to harmonize their standards to Canadian ones. However, to make such a procedure work in practice, the SCC will have to inform Canadian SDOs that they need to abide by the provision found in CETA's article 4.4.1 and cooperate with their European counterparts when requested to do so. The European Commission's Directorate-General for Internal Market,

⁸ For details on the WTO's Technical Barriers to Trade Agreement, see www.wto.org/english/res_e/publications_e/tbttrade_e.pdf.

⁹ There are three European Standards Organizations: the European Committee for Standardization (general standards), the European Committee for Electrotechnical Standardization and the European Telecommunications Standards Institute.

¹⁰ See <https://ec.europa.eu/growth/single-market/ce-marking/>.

Industry, Entrepreneurship and SMEs will need to do the same with EU-based SDOs.

Similarly, CETA allows for a Canadian technical regulation or standard to be deemed equivalent to a European one, and vice versa. Article 4.4.2 states the following:

A Party that has prepared a technical regulation that it considers to be equivalent to a technical regulation of the other Party having compatible objective and product scope may request that the other Party recognise the technical regulation as equivalent. The Party shall make the request in writing and set out detailed reasons why the technical regulation should be considered equivalent, including reasons with respect to product scope. The Party that does not agree that the technical regulation is equivalent shall provide to the other Party, upon request, the reasons for its decision.

Again, the SCC will have to inform Canadian SDOs of the above provision's existence while the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs will be responsible for doing so with European SDOs.

In the case of non-cooperation between SDOs or a dispute between a Canadian and a European SDO (a disagreement as to the equivalent nature of their standard), the Committee on Trade in Goods would be called upon to help settle the matter. If the Committee on Trade in Goods cannot find a solution to the dispute, then it would ask the CETA Joint Committee to set up an ad hoc technical working group to try to sort out the issue (article 4.7.2):¹¹

If the Parties are unable to resolve a matter covered under this Chapter through the Committee on Trade in Goods, upon request of a Party, the CETA Joint Committee may establish an ad hoc technical working group to identify solutions to facilitate trade. If a Party does not agree with a request from the other Party to establish a technical working group, it shall, on request, explain the reasons for its decision. The Parties shall lead the technical working group.

Presumably, if a technical working group set up by the CETA Joint Committee fails to resolve the matter at hand, then the only other available recourse would be the dispute settlement mechanism provided in CETA's chapter 29.

SPS Measures

CETA's chapter 5 on SPS measures is similar in nature to chapter 4 on technical barriers to trade, in that it also deals with regulations, standards and conformity assessment but with respect to the particular domain of food safety, animal health and plant health. As for chapter 4, the basis for CETA's chapter 5 is a WTO agreement: the Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement").¹²

To avoid SPS measures acting as obstacles to trade in fresh or frozen meat, for example, CETA's article 5.6.1 states: "The importing Party shall accept the SPS measure of the exporting Party as equivalent to its own if the exporting Party objectively demonstrates to the importing Party that its measure achieves the importing Party's appropriate level of SPS protection." This means that the people at Agriculture and Agri-food Canada will have to work with their counterparts at the European Commission's Directorate-General for Agriculture and Rural Development to ensure that such equivalencies are in place to facilitate trade in food, animals and plants between Canada and the European Union. This cooperation will take place through CETA's Joint Management Committee for Sanitary and Phytosanitary Measures, which is "established under article 26.2.1(d) and comprises regulatory and trade representatives of each Party responsible for SPS measures" (article 5.14).

CETA's annex 5-E already lists a number of areas where equivalence exists (with specific conditions in some cases) between the two CETA parties. However, the principles and guidelines to "determine, recognize and maintain equivalence" (article 5.6.2), which are supposed to be spelled out in annex 5-D but are not, remain to be defined by both parties to the agreement. So the Joint Management Committee for Sanitary and Phytosanitary Measures will have to first agree on these principles and guidelines before it can move to extending the list of areas where there is equivalence between Canadian and European SPS measures.

Article 5.7.4 allows for an "establishment or facility" in the exporting territory to be approved by the importing jurisdiction "without prior inspection of that establishment or facility" in the case where "the importing Party maintains a list of authorised establishments or facilities for the import of a commodity." This is possible only if: "(a) the exporting Party has requested such an approval for the establishment or facility, accompanied by the appropriate guarantees; and (b) the conditions and

¹¹ CETA's article 26.1 established the CETA Joint Committee and defines its role in the implementation and administration of the agreement. Its composition and role are discussed in the next section.

¹² Details on the SPS Agreement can be found at www.wto.org/english/tratop_e/sps_e/spsund_e.htm.

procedures set out in Annex 5-F are fulfilled.”¹³ This means, for instance, that a Canadian establishment could, once EU authorities have approved it, export fresh meat to the European Union without having to go through an authorized establishment in the European Union. As such, it could potentially export directly to supermarket chains without having to go through a European wholesale importer. But for this to happen, the Canadian authorities have to request such an approval from EU authorities under the conditions set out in article 5.7.4. They will also have to inform Canadian establishments and facilities of this new possibility provided by CETA since the initial request for approval will most likely come from the establishment or facility. Obviously, EU authorities and establishments/facilities will have to do the same if they want easier access to the Canadian market.

Regulatory Cooperation

Regulatory cooperation is the main theme of the previous two sections. CETA nevertheless devotes an entire, separate chapter to the topic: chapter 21, which “applies to the development, review and methodological aspects of regulatory measures of the Parties’ regulatory authorities” that are covered by several chapters in CETA, including chapters 4 on TBT and 5 on SPS (see article 21.1).

Chapter 21’s main function is to put in writing Canada and the European Union’s commitment to

further develop regulatory cooperation in light of their mutual interest in order to:

- (a) prevent and eliminate unnecessary barriers to trade and investment;
- (b) enhance the climate for competitiveness and innovation, including by pursuing regulatory compatibility, recognition of equivalence, and convergence; and
- (c) promote transparent, efficient and effective regulatory processes that support public policy objectives and fulfil the mandates of regulatory bodies, including through the promotion of information exchange and enhanced use of best practices. (article 21.2.4).¹⁴

¹³ Annex 5-F states: “The conditions and procedures for the purpose of Article 5.7.4(b) are as follows: (a) the import of the product has been authorised, if so required, by the competent authority of the importing Party; (b) the establishment or facility concerned has been approved by the competent authority of the exporting Party; (c) the competent authority of the exporting Party has the authority to suspend or withdraw the approval of the establishment or facility; and (d) the exporting Party has provided relevant information requested by the importing Party.”

¹⁴ Article 21.4 provides a long list of possible regulatory cooperation activities.

It is worth noting, however, that this commitment to regulatory cooperation is not an obligation, it is voluntary: “The Parties may undertake regulatory cooperation activities on a voluntary basis. For greater certainty, a Party is not required to enter into any particular regulatory cooperation activity, and may refuse to cooperate or may withdraw from cooperation” (article 21.2.6).¹⁵

To facilitate and promote regulatory cooperation between Canada and the European Union, CETA’s article 21.6 will establish a Regulatory Cooperation Forum (RCF),¹⁶ which “shall be co-chaired by a senior representative of the Government of Canada at the level of a Deputy Minister, equivalent or designate, and a senior representative of the European Commission at the level of a Director-General, equivalent or designate, and shall comprise relevant officials of each Party” (article 21.6.3). It can be expected that it will be the RCF that will consult with private-sector stakeholders to inform its priorities, work plans and assessments (see article 21.8). Curiously, article 21.9 also specifies contact points for “communication between the Parties on matters arising under this Chapter.” For Canada, it will be the Technical Barriers and Regulations Division of Global Affairs Canada (GAC). For the European Union, it will be the International Affairs Unit of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs. Article 21.9.2 states that “each contact point is responsible for consulting and coordinating with its respective regulatory departments and agencies, as appropriate, on matters arising under this Chapter.” How this role differs from that of the RCF is unclear. Chapter 21 is silent on the relationship between these contact points and the RCF. One can only hope that the contact points will be RCF members, in order to ensure that regulatory cooperation between Canada and the European Union will be coherent and effective to some degree.

Customs and Trade Facilitation

CETA’s chapter 6 deals with customs and trade facilitation. The European Commission defines trade facilitation as “the simplification and harmonisation of international trade procedures including import and export procedures,” such as “the activities (practices and formalities) involved in collecting, presenting, communicating and processing the data required for movement of goods in international

¹⁵ Article 21.2.6 requires the party that refuses to cooperate to “explain the reasons for its decision to the other Party.” Article 21.5 adds that “a Party is not prevented from adopting different regulatory measures or pursuing different initiatives for reasons including different institutional or legislative approaches, circumstances, values or priorities that are particular to that Party.”

¹⁶ This is similar to the Canada-United States Regulatory Cooperation Council.

trade.”¹⁷ Thus, chapter 6 aims to ensure that goods exported from Canada to the European Union (and vice versa) can be processed and cleared by Canadian and EU customs officials as efficiently and effectively as possible (given, for example, security risks). This is why CETA’s article 6.1.2 requires that Canada and the European Union, “to the extent possible, cooperate and exchange information, including information on best practices, to promote the application of and compliance with the trade facilitation measures in this Agreement.”

One area where such cooperation between the Canada Border Services Agency (CBSA) and the European Commission’s Directorate-General for Taxation and Customs Union (TAXUD) is with respect to the expedited release of goods, since goods being held up at customs can create additional costs or lost revenues for importers and exporters. Article 6.3.4 requires Canada and the European Union to: “(a) provide for advance electronic submission and processing of information before physical arrival of goods to enable their release upon arrival, if no risk has been identified or if no random checks are to be performed; and (b) provide for clearance of certain goods with a minimum of documentation.” Article 6.3.5 goes even further:

Each Party shall, to the extent possible, ensure that its authorities and agencies involved in border and other import and export controls cooperate and coordinate to facilitate trade by, among other things, converging import and export data and documentation requirements and establishing a single location for one-time documentary and physical verification of consignments.

The Joint Customs Cooperation Committee (see article 6.14) is the specialized CETA committee that will be responsible for implementation and administration of chapter 6. As such, it will oversee the cooperation and coordination between CBSA and TAXUD.

Another area where CETA requires Canadian and European border services to cooperate with each other, through the Joint Customs Cooperation Committee, is with respect to trade in goods infringing intellectual property rights (for example, counterfeit goods), which are dealt with in chapter 20. For instance, article 20.49.1 states that:

Each Party agrees to cooperate with the other Party with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, each Party shall establish contact points in

its administration and be ready to exchange information on trade in infringing goods. Each Party shall, in particular, promote the exchange of information and cooperation between its customs authorities and those of the other Party with regard to trade in goods infringing intellectual property rights.

Labour Mobility

CETA aims to facilitate the mobility of labour between Canada and the European Union. It does so in two ways: the temporary entry and stay of natural persons for business purposes (chapter 10) and the mutual recognition of professional qualifications (chapter 11). The goal of these two chapters is to make trade in services and investment between Canada and the European Union easier. For instance, in the case of professional services, a Canadian engineer or an architect might have to spend a significant period of time in the European Union to manage or supervise a project under a contract obtained by a Canadian engineering firm. In such a case, the engineer or architect in question has to be able to remain in the European Union for more than the three-month limit currently in place for visitors. Moreover, this person would need to have his or her professional qualifications officially recognized in the European Union in order to sign statutory documents that may be required by the authorities. In the case of investment, a Canadian company may wish to send one or several of its employees to oversee a new investment in the European Union (for example, the building of a new factory or the acquisition of a European company), for a period of more than three months.¹⁸ According to article 10.7.5, the “permissible length of stay of key personnel”¹⁹ is as follows:

- (a) intra-corporate transferees (specialists and senior personnel): the lesser of three years or the length of the contract, with a possible extension of up to 18 months at the discretion of the Party granting the temporary entry and stay;
- (b) intra-corporate transferees (graduate trainees): the lesser of one year or the length of the contract;
- (c) investors: one year, with possible extensions at the discretion of the Party granting the temporary entry and stay;
- (d) business visitors for investment purposes: 90 days within any six month period.

With regards to what article 10.1 defines as contractual service suppliers and independent professionals, the

¹⁸ For more details on the potential benefits of greater labour mobility as a result of CETA, see Brender (2014).

¹⁹ The notion of key personnel is defined in article 10.1.

¹⁷ http://ec.europa.eu/taxation_customs/customs/policy_issues/trade_facilitation/index_en.htm.

maximum length of stay that CETA allows them is 12 months, under certain conditions (see article 10.8).

To make chapter 10 work in practice will require close cooperation and coordination between Canadian and European immigration authorities as well as between those responsible for border services. Article 10.5 identifies the contact points for Canada, the European Union and the EU member states who will be responsible for implementing and administrating chapter 10.²⁰ It stipulates that they will need to exchange information (as per article 10.4)²¹ and meet as required “to consider matters pertaining to this Chapter, such as: (a) the implementation and administration of this Chapter, including the practice of the Parties in allowing temporary entry; (b) the development and adoption of common criteria as well as interpretations for the implementation of this Chapter; (c) the development of measures to further facilitate temporary entry of business persons.”

Furthermore, border guards will need to be properly informed and trained about the new CETA provisions with respect to the temporary entry and stay of natural persons for business purposes, such that Canadians or Europeans are not unduly delayed (or even blocked) when they arrive at the point of entry. Natalie Brender (2014, 15) notes, for example, that the application of NAFTA’s chapter 16 on labour mobility has been inconsistent, because “border officials may lack adequate training and comprehension of the occupational classes that they are asked to adjudicate.” Such a situation has created a lot of frustration with Canadian and American business people and firms. Surely, Canadian and European officials will want to avoid the same thing happening in CETA’s context.

The second CETA labour mobility component concerns the mutual recognition of professional qualifications, which is necessary if business professionals such as engineers, architects, accountants and so on want to be able to offer their services in the party’s territory. While chapter 10 deals with the measures that allow CETA business professionals to stay longer in Canada or the European Union, chapter 11 aims to get Canadian and European authorities to negotiate and sign mutual recognition agreements (MRAs) that

allow qualified professionals (or technicians)²² to provide services and act according to their formal qualifications and be legally recognized by the other party’s authorities.²³

Chapter 11 could be the most complex and difficult part of CETA to implement (ibid.). Professional qualifications are provincial competencies in Canada, which means that the federal government has no authority or power to force Canadian (i.e., provincial) occupation regulatory bodies to negotiate MRAs with their European counterparts,²⁴ which, for their part, remain at the member state (i.e., national) level inside the European Union. This means that the European Commission is also not in a legal position to oblige such bodies to negotiate MRAs with their Canadian counterparts. In other words, the Canadian federal government and the European Commission can only encourage occupational regulatory bodies in Canada and the European Union to propose and negotiate MRAs with each other (see article 11.3.1). They can also provide a framework for doing so, which is what articles 11.3.2 to 11.3.5 do,²⁵ with the so-called “MRA Committee” being responsible for the final approval of MRAs between Canadian and European authorities.²⁶ Article 11.5 defines the MRA Committee’s composition and role:

The MRA Committee responsible for the implementation of Article 11.3 shall: (a) be composed of and co-chaired by representatives of Canada and the European Union, which must be different from the relevant authorities or professional bodies referred to in Article 11.3.1. A list of those representatives shall be confirmed through an exchange of letters; (b) meet within one year after this Agreement enters into force, and thereafter as necessary or as decided; (c) determine its own rules of procedure; (d) facilitate the exchange of information regarding laws, regulations, policies and practices concerning standards or criteria for the authorisation, licensing or certification

20 In Canada, it is the Director, Temporary Resident Policy, Immigration Branch, Citizenship and Immigration Canada; in the European Union, it is the Director-General, Directorate General for Trade, European Commission; contact points for member states of the European Union are listed in annex 10-A.

21 Article 10.4.1 states “each Party shall, no later than 180 days after the date of entry into force of this Agreement, make available to the other Party explanatory material regarding the requirements for temporary entry under this Chapter that enables business persons of the other Party to be acquainted with those requirements.”

22 Article 11.1 defines professional qualifications as “the qualifications attested by evidence of formal qualification and/or professional experience.”

23 Article 11.2.1 states the following: “This Chapter establishes a framework to facilitate a fair, transparent and consistent regime for the mutual recognition of professional qualifications by the Parties and sets out the general conditions for the negotiation of MRAs.”

24 For a discussion of federal and provincial competencies and relations in the context of CETA, in particular, and Canadian international trade policy, in general, see Fafard and Leblond (2012) as well as Kukucha (2013).

25 CETA also offers guidelines for the negotiation and conclusion of MRAs (see article 11.6 and annex 11-A).

26 Formally, the MRA Committee is known as the Joint Committee on Mutual Recognition of Professional Qualifications.

of regulated professions; (e) make publicly available information regarding the negotiation and implementation of MRAs; (f) report to the CETA Joint Committee on the progress of the negotiation and implementation of MRAs; and (g) as appropriate, provide information and complement the guidelines set out in Annex 11-A.

From the above, it is clear that CETA's MRA Committee will provide the moral leadership (but not the legal authority) for getting occupation regulatory bodies in Canada and the European Union to negotiate and conclude MRAs with each other so as to allow Canadian and European recognized professionals and technicians to provide their services in the other party's territory. But it faces a daunting task. For instance, according to the joint study conducted by the European Commission and the Government of Canada (2008), there are more than 440 occupational and professional bodies in Canada alone (cited in Brender 2014, 15), meaning a lot of people to convince to undertake negotiations for an MRA. And then there is the EU side, where there are probably as many, if not more, such occupational regulatory bodies.

Given that it is ultimately the professional and technical regulatory bodies at the provincial and member-state level that will decide if, when and how they negotiate and conclude MRAs with each other, it seems appropriate and necessary for the MRA Committee to involve and coordinate with (Canadian) provincial and (EU) member-state governments in the process of convincing such bodies to explore and undertake MRA negotiations. Provincial and member-state governments could, in some cases, provide incentives for these bodies to negotiate and conclude MRAs.

In the end, one can only hope that regulated professionals and technicians on both sides of the Atlantic will realize that such MRAs could be advantageous for them. After all, they are the ones who can most clearly make the case for MRAs to those who lead the occupational regulatory bodies. If one extrapolates from the France-Quebec agreement on labour mobility, which was signed in the fall of 2008, it appears that occupational regulatory bodies will see MRAs between Canada and the European Union in a positive light. According to Yves Doutriaux (2015, 256), 70 MRAs had been signed between French and Quebec bodies at the end of 2014, that is, six years after the agreement between France and Quebec came into effect. Nonetheless, occupational regulatory bodies outside Quebec and France will require information, argumentation and coordination from the MRA Committee as well as provincial and member-state governments in order to begin negotiating MRAs.

Government Procurement

In addition to liberalizing trade and investment in goods and services, as well as facilitating labour mobility and regulatory cooperation, CETA, with its chapter 19, aims to create a level playing field in matters of government procurement between Canada and the European Union. When the CETA negotiations began in 2009, EU firms did not have access to government procurement markets in Canada at the provincial and municipal levels. Through the plurilateral Agreement on Government Procurement (GPA) negotiated at the WTO, European firms could only bid on federal government contracts without the fear that their bid would be rejected on the basis of the firm's nationality. The basic international trade principles of non-discrimination and national treatment did not apply to provincial and municipal governments with respect to public procurement contracts. For this reason, the European Union made access to provincial and municipal government procurement markets in Canada a key demand in the CETA negotiations.

In 2010, Canada and the United States signed an agreement on government procurement that allowed US firms to bid on provincial and municipal public contracts in Canada. This agreement was signed in order for Canadian businesses to be exempted from the "Buy American" provisions of the US Recovery Act (i.e., the American stimulus package). As a result of this agreement, all provincial and territorial governments, with the exception of Nunavut, agreed to be on the list of Canadian government entities that are subject to the GPA's terms; however, they did not sign the GPA.²⁷

In CETA's case, the provinces and territories are also not signatories to the agreement. This means that EU firms will now have (in principle) access to provincial and municipal government procurement markets in Canada; however, if provinces or municipalities decide to not apply the provisions found in chapter 19, then EU firms could seek compensation through the investor-state dispute settlement (ISDS) mechanism set up in CETA's chapter 8 on investment. In such a case, as it has been with NAFTA's chapter 11 (Fafard and Leblond 2012, 6), it is the federal government that would be liable to pay the compensation if the CETA ISDS panel or tribunal found in favour of the European firm. This leaves provincial and municipal governments off the hook if they decide to discriminate against a European firm in favour of a local one.

Therefore, it is important for provincial and territorial governments in Canada to pass implementation laws that would make the provisions found in CETA's chapter 19 legal so that government entities, whether municipal, regional or provincial, would be obliged to follow them. As for the Canadian federal government, although it

²⁷ For more details, see Fafard and Leblond (2012, 7).

cannot legally force provincial governments to do so, it can still encourage them to pass such laws and monitor their implementation.

Federal, provincial and municipal governments should also work together to facilitate the transparency and efficiency of the government procurement process in Canada, as well as the contracts that are on offer at any given time. Having a single point of access for potential suppliers, whether they are Canadian or European, would help generate more competition in terms of bidding. In addition, it would make it easier for small and medium-sized businesses to monitor procurement projects on offer, thereby increasing the chance that they will respond to calls for tender by governments and their agencies. One need only consult the long list of Canadian public procurement access sites in CETA's annex 19-8 to understand that Canada's government procurement system could benefit from some significant streamlining. The MARCAN (Marketplace Canada) website²⁸ is a good start, but a centralized system for public procurement contracts above certain thresholds, whether they originate with central, local or regional government authorities, would be even better. Since the European Union has managed to create such an access point,²⁹ there is no reason why Canadian federal, provincial and municipal governments could not do the same. Obviously, the Internal Trade Secretariat, which manages MARCAN, would need to take the lead, possibly with the help of the federal government, in creating such an electronic infrastructure for Canada, just as the European Commission has done for the European Union.

Along with a single access point for tenders, the European Union has also put into place a system of standardized documents for government procurement tenders across the union. The European Commission has recently gone one step further and created a single procurement document. With the European Single Procurement Document (ESPD), the commission aims to "considerably reduce the administrative burden for companies, in particular small and medium-sized enterprises (SMEs), who want to have a fair chance at winning a public contract."³⁰ Again, all three levels of governments in Canada should work together to offer a similar single procurement document. The ESPD could even provide the template for doing so.

In sum, Canadian governments would not only improve trade and investment with the European Union by integrating, standardizing and streamlining their

procurement processes across the country, they would also help boost internal trade within Canada.³¹ In order to do so, they must work more closely, not only together, but also with their European counterparts, in particular the European Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, which is responsible for government procurement in the European Union. The Committee on Government Procurement that CETA will establish (see article 19.19) should be the starting point for interactions between Canadian and EU officials in terms of information sharing and coordination.

Concluding Remarks on Major Implementation Issues

As a second-generation FTA, CETA will not realize its full economic potential unless it is implemented properly and fully. This means that there will be a lot of work to do once the agreement is in force. The most important second-generation issue in CETA is that of regulatory cooperation, in particular with respect to TBT and SPS. Nowadays, most of the obstacles to international trade that are "beyond the border" pertain to regulatory differences, in terms of standards, rules, processes and enforcement. Even labour mobility between Canada and the European Union, which is important to promote and support trade and investment, can also be considered a regulatory matter. Without effective regulatory cooperation between Canada and the European Union, CETA will be an underperforming agreement. The same applies to government procurement cooperation, first, between Canada's three levels of government, and, then, with the European Commission. The next section discusses the institutional features that are deemed necessary to make the above-mentioned cooperation effective and comprehensive so that CETA is fully and properly implemented.

GETTING THE JOB DONE: INSTITUTIONAL COORDINATION³²

It is one thing to identify the work that will need to be done once CETA becomes operational; however, it is another to identify who will be responsible for making sure that the job actually gets done in an effective and timely fashion. As mentioned in the previous section, specialized committees will be responsible for implementing and managing CETA chapters. For the major issues that this paper is concerned with, the following specialized committees have been identified, which will be established according to article 26.2: Committee on Trade in Goods; Joint Management Committee on Sanitary and Phytosanitary

28 See www.marcan.net.

29 The European public procurement system is known as SIMAP (<http://simap.ted.europa.eu/en>).

30 The ESPD was adopted on January 5, 2016 (http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8611).

31 For a recent analysis of internal trade agreements in Canada, see Kukucha (2015).

32 The content of this section has benefited from discussions with Jim Mitchell and Cam Vidler. The author would like to thank them for their input.

Measures; Joint Customs Cooperation Committee; Joint Committee on Mutual Recognition of Professional Qualifications; Regulatory Cooperation Forum; and Committee on Government Procurement. Although such specialized committees are important for CETA's proper implementation, they will need to meet more often than the once-per-year minimum mandated by article 26.2. Steger (2012, 124) underlines the importance of frequent meetings between the parties when she writes: "A...Committee that meets only once a year will not be able to provide sufficient infrastructure and oversight to adequately ensure that the mutual recognition obligations are effectively carried out by the regulatory agencies concerned."

The specialized committees will need to be pressured by a higher authority to organize regular meetings in order to achieve the required cooperation to implement CETA properly and comprehensively, especially in the agreement's first years. This higher authority will also have to monitor the work done by these specialized committees to ensure that it is done in a timely and effective manner. As such, the specialized committees will have to report on their work to this authority. Finally, such an authority will need to coordinate the activities undertaken by the various specialized committees, in order to avoid duplication as well as gaps and to ensure coherence throughout the work plans.

The good news is that CETA already provides for the creation of such an authority (as per article 26.1): the CETA Joint Committee. This committee will be co-chaired by the Canadian Minister of International Trade and the European Commissioner for Trade, or their designees, and will meet at least once a year. It will have "the power to make [binding] decisions in respect of all matters when this Agreement so provides...subject to the completion of any necessary internal requirements and procedures, and the Parties shall implement them. The CETA Joint Committee may also make appropriate recommendations" (article 26.3). In other words, the CETA Joint Committee is CETA's ultimate decision-making body when it comes to implementing and administering the agreement.

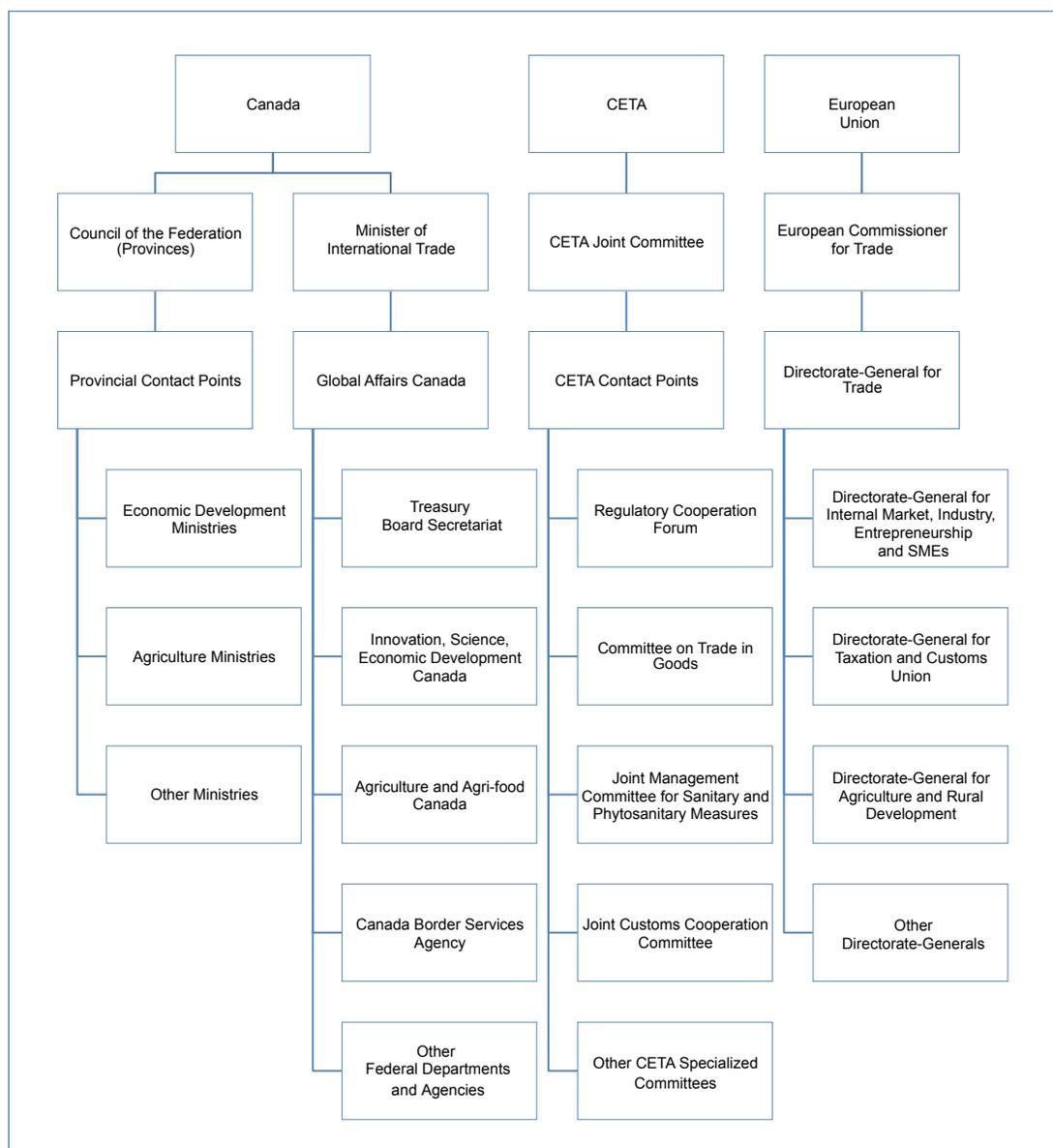
Given the high-level nature of the CETA Joint Committee, it is unlikely that it will meet more than once or twice per year. As argued by Steger (2012), this will not be sufficient to ensure adequate coordination and monitoring of the various CETA specialized committees. She also points out that effective regulatory cooperation requires multilevel government coordination: "In order for regulatory cooperation to be effective, there should be coordination across other national and sub-national level departments and agencies in both the EU and Canada" (ibid., 124). This is even more important in Canada, since the provinces will ultimately be responsible for implementing portions of CETA as a result of their exclusive constitutional competencies. To accomplish such coordination, the CETA Joint Committee will need some kind of permanent

secretariat to follow up and report back on its decisions. This secretariat would also coordinate with provinces in Canada and member states in the European Union to ensure effective and timely implementation of CETA provisions.

If an actual physical secretariat is not deemed feasible, there should, at the very least, be a dedicated full-time staff inside both GAC and the European Commission's Directorate-General for Trade that would work together as if it were a CETA secretariat. This may be what the CETA negotiators had in mind when they agreed on article 26.5: "Each Party shall promptly appoint a CETA contact point and notify the other Party within 60 days following the entry into force of this Agreement" (article 26.5.1). Article 26.5.3 also states that the contact points will communicate with each other as required. In terms of the tasks that the CETA contact points will be responsible for, article 26.5.2 specifies that:

The CETA contact points shall: (a) monitor the work of all institutional bodies established under this Agreement, including communications relating to successors to those bodies; (b) coordinate preparations for committee meetings; (c) follow up on any decisions made by the CETA Joint Committee, as appropriate; (d) except as otherwise provided in this Agreement, receive all notifications and information provided pursuant to this Agreement and, as necessary, facilitate communications between the Parties on any matter covered by this Agreement; (e) respond to any information requests pursuant to Article 27.2 (Provision of information); and (f) consider any other matter that may affect the operation of this Agreement as mandated by the CETA Joint Committee.

In addition to a contact point, which for Canada would be located inside GAC with full-time, dedicated staff (referred to herein as the [Canadian] CETA Coordinating Office), the Minister of International Trade should see to it that an Interdepartmental CETA Implementation Committee be created to coordinate and monitor implementation of the agreement across federal government departments. This interdepartmental committee would be chaired and coordinated by GAC (via the CETA Coordinating Office). This would help ensure that CETA's implementation would be conducted in a coherent and effective manner. The Interdepartmental CETA Implementation Committee would also be responsible for coordinating and monitoring the work of Canadian officials inside the various CETA specialized committees. The (Canadian) CETA Coordinating Office would relay to this interdepartmental committee any issue that comes up at the CETA Joint Committee or in interactions with the European Union's

Figure 1: Required Institutional Structure to Implement CETA Effectively


Source: Author.

contact point (i.e., a European CETA Coordinating Office within the Directorate-General for Trade. Alternatively, it would communicate issues arising out of the federal Interdepartmental CETA Implementation Committee to the European CETA Coordinating Office and the CETA Joint Committee.

The Canadian CETA Coordinating Office would also be responsible for coordinating and monitoring CETA's implementation at the provincial (and municipal) levels. To do so, it would liaise with its provincial counterparts, assuming that provincial governments would dedicate contact points for coordinating and monitoring CETA's implementation within their given province, themselves liaising with relevant provincial ministries as well as

municipalities.³³ Provincial CETA contact points would, in addition, need to coordinate with each other, possibly under the aegis of the Council of the Federation or some other equivalent forum.

Figure 1 provides an illustration of the extensive institutional framework that will need to be put in place in order to implement CETA's second-generation provisions in an effective and timely fashion. It clearly demonstrates the multilevel nature of intra- as well

³³ The C-Trade Committee, which brings together federal and provincial trade officials several times a year to discuss international trade-related matters, could provide the basis for such a coordination and monitoring mechanism between the federal and provincial governments.

as intergovernmental cooperation in Canada and the European Union, with transatlantic cooperation taking place through the committee structure provided by CETA. On the Canadian side, it identifies the main provincial and federal government departments and agencies that should be involved in CETA's implementation and management; however, this does not mean that the cooperation of other departments and agencies will not be required. For example, it is likely that provincial ministries responsible for municipal affairs will need to be involved with regards to the implementation of CETA's government procurement provisions. On the EU side, Figure 1 identifies the key European Commission directorate-generals that will implement and manage CETA's provisions. It should, however, be understood that these directorate-generals will communicate and coordinate with the relevant member-state government departments and agencies as well as supranational agencies (such as the European standard-setting bodies) in order to fulfill the European Union's CETA commitments adequately.

As part of their coordinating and implementation work, Canadian federal and provincial contact points for CETA will also need to consult closely with stakeholders, in particular the business community, which stands at the heart of CETA. Similar consultations will also take place in the European Union. In addition to stakeholder consultations by EU, federal and provincial contact points, CETA's specialized committees will have to work closely with their own specific stakeholders as they go about implementing and administering the various CETA chapters. These consultations will serve to help make implementation decisions in Canada and the European Union useful and relevant for stakeholders, most especially business firms, who will need to know how to take advantage of what CETA has to offer besides the elimination of tariffs on most goods traded between Canada and the European Union.

Finally, in order to maintain the momentum on CETA's implementation and ensure that the job gets done, especially in the first years, Canadian and EU political leaders will also need to get involved. At the annual Canada-EU summit, leaders should discuss CETA's implementation and management and, if necessary, call on the CETA Joint Committee to undertake necessary actions to achieve certain issues that have been brought to their attention. On such occasions (or in the preparations leading up to the summit), the CETA Joint Committee would be responsible for briefing Canadian and EU leaders on the status of CETA's implementation and functioning.

In sum, to manage CETA's implementation in an effective and timely manner (i.e., get the job done), the agreement has actually foreseen a complex institutional architecture with the CETA Joint Committee, the contact points and the specialized committees. However, this CETA institutional structure needs to be linked with the rest of

the machinery of government operating at the federal and provincial levels in Canada and at the supranational and national levels in the European Union. Figure 1 provides a schematic representation of the comprehensive institutional apparatus that will be needed to make sure that CETA is implemented and managed effectively so as to realize the agreement's full socio-economic potential.

CONCLUSION

With ratification under way, CETA is expected to come into force sometime in 2017. Immediately, business firms will be able to take advantage of the elimination of tariff lines on a large number of goods traded between Canada and the European Union. However, there are a number of obstacles to trade and investment that will remain, notably those related to standards, rules, regulations and procedures. Differences and duplications between Canada and the European Union on such issues represent additional transaction costs for Canadian (European) firms doing or wanting to do business with or in the European Union (Canada). These costs ultimately reduce the economic welfare of Canadians and Europeans. As a second-generation FTA, CETA aims to increase the well-being of Canadians and Europeans by reducing, if not eliminating, beyond-the-border obstacles to trade and investment.

Hence, once CETA comes into force, there will be a lot of work to do to get rid of or reduce these obstacles. And it will only happen if there is a strong commitment to implementing the agreement effectively and completely at all levels of government, in Canada as well as in the European Union. A comprehensive institutional architecture is an integral part of this commitment (see Figure 1). Stakeholders, most especially the business community, on both sides of the Atlantic will need to monitor closely the implementation work being done to identify issues or areas that are not being dealt with in a proper and timely fashion. In other words, they will need to keep the feet of Canadian and EU politicians and bureaucrats close to the CETA fire.

A successfully implemented CETA should be a boon for the Canadian economy, if the impact studies conducted before the negotiations got under way are correct. It should be beneficial for Canada in three other ways. First, it will demonstrate that Canada's decentralized model of federalism can be made to work effectively and not represent an obstacle to the success of free trade in the twenty-first century. This way, Canada would probably find it easier to negotiate second-generation FTAs in the future. Second, assuming that it is ratified, Canada will be well prepared to implement the Trans-Pacific Partnership, which is in many ways similar to CETA. Third, and finally, CETA's effective implementation will surely help address many of the obstacles and issues that still plague Canada's internal trade.

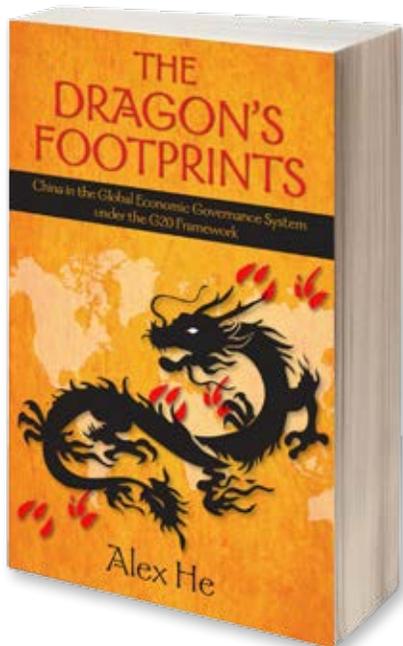
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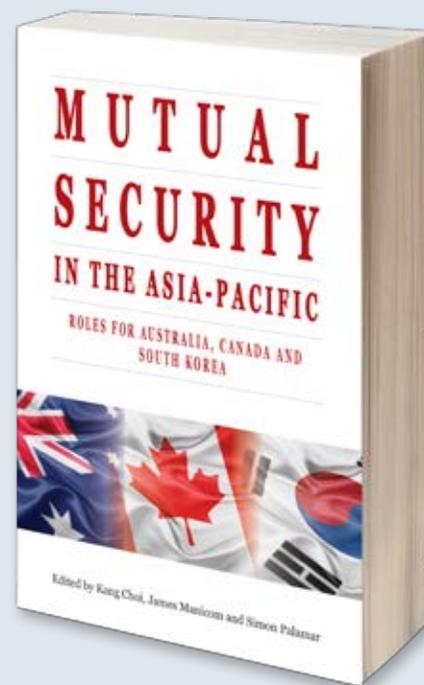
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China and Global Trade Governance

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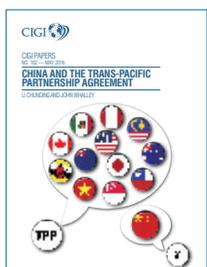
This paper explores policies, strategies and domestic factors that jointly determine China's participation in multilateral and regional trade regimes, based on an examination of the performance and roles China played in both the World Trade Organization and some of the regional trade agreement (RTA) negotiations since 2001. China's attitude and response to the Transatlantic Trade and Investment Partnership negotiations is a case in point that reflects its strategies, policies and domestic factors in RTAs and global trade governance. China's negotiation in the Regional Comprehensive Economic Partnership represents another.



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The Trans-Pacific Partnership (TPP) Agreement was concluded in October 2015, but still faces the challenge of ratification in each of the 12 member countries that are partners to the agreement. China, the world's second-largest economy, is not part of the TPP agreement, which has provoked a great deal of debate within China on the best strategy for it to take to deal with the TPP. This paper discusses China's possible trade strategy in light of the TPP.



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Patrick Leblond

One of the main components of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) is a chapter that seeks to liberalize trade and investment in financial services between the partners, while ensuring that markets and their agents will be properly regulated and protected through prudential regulation. Although some observers fear that CETA might undermine the high quality of financial regulations in Canada or the European Union, this paper demonstrates that such concerns are unfounded.

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67 Erb Street West
Waterloo, Ontario N2L 6C2, Canada
tel +1 519 885 2444 fax +1 519 885 5450
www.cigionline.org

