

EXPLANATORY MEMORANDUM ON THE COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA) BETWEEN CANADA, OF THE ONE PART, AND THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE OTHER PART

TITLE OF TREATY

Comprehensive Economic and Trade Agreement (CETA) between Canada, of the One Part, and the European Union and its Member States, of the Other Part

Command Paper Number 9622

SUBJECT MATTER

1. The concluded agreement reflects the outcome of the Free Trade Agreement (FTA) negotiations undertaken by the European Commission (acting on behalf of the European Union and its Member States) with Canada.
2. Negotiations were initially launched at a joint Canada-EU Summit held in Prague in the Czech Republic on 6 May 2009. An agreement in principle was signed between the then Canadian Prime Minister, Stephen Harper and the then European Commission President, Jose Manuel Barroso, on 18 October 2013. The negotiations were concluded on 1 August 2014 and the agreement was officially presented at a further joint summit held in Toronto on 25 September 2014. The European Parliament voted to approve the agreement on 15 February 2017.
3. CETA was negotiated alongside an EU-Canada Strategic Partnership Agreement (SPA). The SPA is a mixed framework political agreement to update the 1976 framework agreement. It contains termination and cessation clauses which reference CETA.
4. The UK Government is proceeding to ratify CETA and the SPA in line with agreed policy that the UK should continue to ratify third country agreements with the EU before the UK exits the EU. UK ratification of existing EU agreements is consistent with our support for the EU's trade agenda while we remain a Member State.

NATURE OF THE AGREEMENT

5. CETA is a "mixed agreement" which means it includes specific elements that fall either under the competence of Member States, that are shared or concurrent competencies with the EU, or that are EU exclusive competence. A "mixed agreement" means that all Member States are parties to the agreement as well as the EU itself and Member States

must ratify it according to their own domestic legislative procedures before it can fully and definitively enter into force and become legally binding on the parties to the agreement.

6. Canada passed the necessary legislation to implement the agreement on 16 May 2017. The agreement has been provisionally applied since 21 September 2017. Only those areas of the agreement falling under EU exclusive competence when the Council agreed signature and provisional application are being provisionally applied.
7. A number of areas within CETA are of shared competence and are exempted from provisional application, including a large part of the chapter on investment (with those provisions being provisionally applied relating only to foreign direct investment). In particular, the majority of the section on investment protection is not being provisionally applied, including measures relating to dispute settlement and expropriation. Measures relating to investment protection and dispute settlement for financial services are also excluded. In addition, provisions relating to camcording are not being provisionally applied.
8. To date, other EU Member States who have already notified the European Commission that they have completed the necessary ratification procedures in their country are – the Czech Republic, Denmark, Estonia, Spain, Croatia, Malta and Portugal.
9. CETA is a comprehensive FTA which comprises thirty chapters, encompassing provisions on a wide range of areas, including market access for goods, services, investment and government procurement, intellectual property rights, sanitary and phytosanitary measures, sustainable development, regulatory co-operation, mutual recognition of professional qualifications, trade facilitation, co-operation on raw materials and technical barriers to trade.
10. From the date of provisional application, CETA has liberalised and eliminated **tariffs** across all economic sectors. The agreement removes the vast majority (98%) of tariffs on industrial goods, all tariffs on many food and drink and fisheries products and 92% of tariffs on agricultural goods. Tariffs on an additional one percent of tariff lines will be eliminated gradually within 3, 5 or 7 years. This will make EU (and UK) exports more competitive in Canada and will have a positive impact on growth and jobs.
11. The issue of **non-tariff barriers** is addressed in the chapter on Technical Barriers to Trade (TBT) which incorporates and builds on the key provisions of the World Trade Organization (WTO) TBT Agreement resulting in specific TBT provisions that are enforceable bilaterally. This chapter contains provisions that will improve transparency and create closer contacts and cooperation between both parties in the area of technical regulations and standards.

12. Additionally, at the end of the agreement, a separate **Protocol on Conformity Assessment** has also been included. This replaces the previous Mutual Recognition Agreement (MRA) with a broader and more ambitious protocol by enlarging the scope of sectors covered. Conformity assessment concerns product testing and certification. The Protocol creates a framework so that Canadian and EU businesses do not need to have their products tested twice resulting in duplication of processes as their products enter each other's markets. The Protocol was developed to complement the provisions in the TBT chapter.
13. In the **government procurement** chapter, the EU and Canada have committed a wide range of contracting entities to ensuring that their procurement activities, above a certain monetary value, are conducted in a non-discriminatory manner and with appropriate transparency. Further details of the scope and coverage of the entities subject to CETA government procurement obligations are set out in annexes to the agreement. Within five years of CETA entering into force, Canada has also agreed to establish a single electronic point of access (SPA) for procurement tenders (similar to that already provided in the EU).
14. The EU and Canada already have comprehensive commitments concerning **subsidies** as laid out in the WTO Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Agriculture. CETA includes a chapter on subsidies which generally reflects and reinforces the rights and obligations set out in the WTO agreement on subsidies. The agreement includes provisions covering exchange of information and notification between the parties which will encourage enhanced transparency. The agreement includes provisions on informal consultations which allow for discussion and action on any subsidy programs concerned which are considered damaging to either EU or Canadian interests. For instance, in respect of consultations on agricultural and fisheries subsidies, the text reflects both the EU and Canada's objective to work towards more multilateral rules in these areas.
15. In relation to **services and investment**, CETA includes commitments on both parties to combat discriminatory measures and restrictions and to have broad regulatory provisions in sectors like financial or telecommunication services. CETA will also bring new opportunities for EU companies by creating access to the Canadian market in key sectors, such as the opening of the Canadian maritime transport market financial services, and postal and courier sectors.
16. CETA includes chapters on the **temporary movement of company personnel** and on the **mutual recognition of qualifications**. In both these enabling areas, the agreement contains important provisions. For instance, CETA has removed a number of limitations on citizenship and residency conditions for workers, such as allowing EU lawyers, accountants, architects and engineers to practice in Canada. In relation to the mutual recognition of qualifications, CETA establishes a

framework by which professional regulatory authorities in both the UK and Canada can jointly develop recommendations for Agreements on MRA to be approved by a CETA Joint Committee. The provisions make it easier for companies to run their operations and to find suitably qualified staff and therefore grow their businesses and expand trade. It also allows opportunities for individual UK citizens be more transferable and take up professional activities in Canada based on existing UK professional qualifications.

17. In the realm of **intellectual property rights (IPR)**, CETA promotes effective protection for EU and Canadian IPR holders via specific commitments, including on copyright and related rights, trademarks, designs, patents, geographical indications and plant varieties. In particular, CETA recognises the special status and offers continuing protection on the Canadian market for certain European agricultural products from specific geographical regions in the EU that are protected as **Geographical Indications (GIs)**.
18. No UK products are included in the list of GI products included at Annex 20-A of the agreement, since at the time CETA was negotiated in 2011, no protected UK product was being exported in large enough quantities for inclusion on the proposed list of protected GIs. The Government consulted industry at the time of the negotiations but no objections were raised to the non-inclusion of UK products. However, CETA also provides that additional GIs may be added later, subject to agreement of both parties (EU and Canada). The Government is working with the Devolved Administrations to review GIs in CETA and will continue to engage with industry on how to protect UK food and drink products.
19. The EU and Canada have also agreed to an additional period of patent protection for eligible pharmaceutical products (so called patent term restoration or extension) to restore part of the life of a patent that has been consumed by clinical trials and delays resulting from bureaucratic approval processes for patent protection. The Agreement also includes enforcement rights in relation to IPR which are aimed at helping to prevent illegitimate trade of, for example, counterfeit goods. The enforcement provisions include civil and border remedies, such as the provision of court injunctions where necessary. The CETA commitments and provisions on IP build on international agreements on IPR issues.
20. In common with other recent FTAs, the CETA text includes three inter-related chapters on **trade and sustainable development matters** which include labour and environmental provisions. Within these chapters, the EU and Canada reaffirm their strong commitment to the principles and objectives of sustainable development. CETA recognises the right of both the EU and Canada to set their own environmental priorities and levels of protection. The EU and Canada also reaffirm commitments made at a multinational level and to effectively enforcing domestic environmental laws. The agreement sets up effective mechanisms on sustainable development matters including a Civil Society Forum, a high

level committee to oversee implementation of the trade-related chapters and to facilitate cooperative activities. CETA also reaffirms the parties' "right to regulate" in areas like labour and environment and for the parties to set their own priorities and levels of protection.

21. CETA includes all the elements of the EU's new approach on **investment protection and investment dispute settlement**. Under CETA, cases will be heard by a permanent tribunal rather than on an ad-hoc basis. CETA also creates an appeal system comparable to that found under domestic legal systems. The commitments made in this area compliment the multilateral dispute settlement framework set out in the WTO and emphasise the importance of resolving disagreements through co-operative means. The agreement also includes a mediation mechanism available on a voluntary basis to tackle disputed trade measures between the state parties subject to the agreement.
22. The agreement annexes include information on tariff elimination schedules, cooperation in the field of motor vehicle regulations, details of sanitary and phytosanitary measures, rules of procedure for arbitration and mediation mechanisms, details of government procurement, guidelines for MRAs, a list of GIs, details relating to the Protocol on rules of origin, list of products covered by the Protocol on conformity assessment and the Protocol relating to pharmaceutical products. It also includes a list of Bilateral Investment Treaties (BITs) between Canada and EU Member States and a Joint Declaration on Wines and Spirits.
23. Overall, CETA is a wide-ranging and substantial agreement between two like-minded trading parties. The vast majority of CETA opportunities for UK and other EU companies, including reductions in tariffs, have been in place since provisional application of the Agreement in September 2017.

MINISTERIAL RESPONSIBILITY

24. The Secretary of State for International Trade has primary responsibility for trade policy. Given that the provisions of this FTA are wide in scope, many Secretaries of State have an interest in this policy area. These include the Chancellor of the Exchequer and the Secretaries of State for Foreign and Commonwealth Affairs, Environment Food & Rural Affairs, Home Affairs, and Transport.

POLICY CONSIDERATIONS

(i) General

25. The UK Government is committed to ratifying and implementing this agreement between the EU and Canada in line with agreed government policy, which will result in the comprehensive liberalisation of trade and

investment across the EU and Canada, and is designed to improve market access opportunities for both exporters and investors.

26. The agreement is consistent with the UK's objectives in trade policy (free, fair and open markets) and with relevant wider policy goals. The UK Government supports this agreement, which is ambitious with substantial gains for all parties on market access and rules. The UK believes the agreement represents a well balanced outcome of negotiations and one that is fully consistent with the UK's policy on FTAs and beneficial for the UK overall.
27. The UK Government is very supportive of CETA and is fully committed to supporting this and other EU agreements whilst we remain an EU Member State. The UK Government is committed to seeking continuity in its current trade and investment relationships post exit, including those covered by EU FTAs or other EU preferential arrangements.
28. The Prime Ministers of the UK and Canada have made clear their intention to seek to swiftly and seamlessly transition CETA into a UK-Canada deal as the UK leaves the EU and have formally announced a Post-Brexit Working Group as the mechanism through which to take this forward.
29. The UK and European Commission negotiating teams have agreed, and reflected in the draft Withdrawal Agreement, that the UK is to be treated as a Member State for the purposes of international agreements during the Implementation Period. The EU will formally notify other parties of this approach in due course. We will be engaging with Canada and other partners to ensure that trade with them will not be disrupted on the day of leaving the EU.
30. Economic Benefits to the UK
 - a) The agreement creates new trade and investment opportunities for both parties, including UK businesses and citizens.
 - b) The impact assessment shows that CETA presents a potential overall benefit with an increase to UK annual net Gross Domestic Profit (GDP) of around £730 million.
 - c) The increase in GDP is associated with: £530 - £670 million (4.3% - 5.5%) net increase in UK exports to Canada from the elimination of most tariffs and reductions in Non-Tariff Measures (NTMs); £1.1 billion (6%) net increase in UK imports from Canada from the elimination of most tariffs and reductions in NTMs; £900 million net increase in UK production from higher UK real income.
 - d) Alongside these benefits we expect a £300 – 400 million (0.01% - 0.02%) increase in UK consumer welfare from an increase in real income.

- e) The top UK sectors expected to benefit the most from CETA, in terms of an increase in total exports, include motor vehicles and financial services. CETA is estimated to increase UK imports from Canada by £1.1 billion due to favourable preferential rates. This could lead to lower UK business costs. The top UK sectors expected to benefit most from import gains in goods and services from Canada include non-ferrous metals, processed foods and other machinery sectors.
- f) The elimination of 98.6% of Canadian tariff lines generates most of the increase in UK exports to Canada. In the long term this is associated with a 33% increase in the value of motor vehicle exports to Canada, as well as a 72% increase in textiles and apparel. Most tariffs were eliminated when CETA was provisionally applied in September 2017; however, some will be eliminated gradually over 3, 5 or 7 years. Analysis from the European Commission shows EU businesses could save up to €590 million a year from elimination of tariffs. We estimate the UK proportion of these savings to range between £64 and £90 million. In practice this means tariff cuts will increase the competitiveness of UK firms by enabling them to offer Canadian consumers better value for money.
- g) As outlined in the UK's Impact Assessment of CETA, it is estimated that service regulation barriers faced by UK exporters will reduce by a tariff equivalent of 1.5% in the financial sector, 1.7% in the recreational sector, 0.6% in the insurance sector and 1.8% in the business services sector.

31. UK– Canada bilateral trade

- a) The UK and Canada have many close political, cultural, historic, emotional, linguistic and economic ties. In 2016, trade between the UK and Canada totalled £15.4 billion in goods and services. UK exports to Canada were £8.3 billion and imports from Canada were £7.1 billion in 2016. Canada was the UK's 16th largest export destination in 2016. The UK was Canada's third largest export destination in goods in 2016 and second largest export destination in services in 2015. The UK has experienced a trade surplus with Canada in seven out of the last ten years.
- b) In 2016, UK exports to Canada were £4.9 billion (59%) in goods and £3.4 billion (41%) in services. In comparison, UK imports from Canada in 2016 were £5.4 billion (75%) in goods and £1.7 billion (25%) in services.
- c) The UK's top export goods sectors to Canada are 'nuclear reactors, boilers and machinery', 'vehicles' and 'aircraft'.

- d) The pattern of imports and exports has changed from 2011-2013 to 2014-16, suggesting significant variability in the pattern of UK-Canada trade.

(ii) Financial

32. There are no direct financial implications for the UK as a result of this FTA. UK businesses are not expected to incur costs if they do not utilise the preferences set out in CETA. Where a business chooses to trade under CETA preferences they will incur a one-off familiarisation cost associated with reading the CETA guidance (£4.6 billion).
33. CETA includes provisions aimed at establishing a standing court – Investment Court System (ICS) to resolve disputes arising from potential breaches of the investment protection chapter. The ICS is not being provisionally applied and will only come into force after the ratification of CETA by all EU Member States. The resource implications of the ICS, such as the remuneration of permanent judges, are yet to be decided by the EU and Canada.

(iii) Reservations and Declarations

31. None

IMPLEMENTATION

32. The agreement will need to be specified as an EU Treaty by Order in Council in accordance with section 1(3) of the European Communities Act 1972 in case it is necessary to subsequently implement obligations in the treaty through subordinate legislation using s 2(2) ECA powers. Section 2(2) of the ECA can only be relied upon if a treaty is specified as an “EU treaty”.
33. The Government has published a separate Explanatory Memorandum in conjunction with the laying of a Specification Order Statutory Instrument (SI).

CONSULTATION

34. The Parliamentary Scrutiny and Select Committees have been consulted on the proposals relating to signature, provisional application and conclusion of this agreement.
35. Throughout the negotiations for this FTA and since its signature, DIT and its predecessor department, the Department for Business, Innovation and Skills (BIS) has actively engaged and consulted with business, the Devolved Administrations and across Government, and has represented agreed policy to the European Commission.

36. The Government is also consulting with Crown Dependencies and Gibraltar.

A handwritten signature in black ink, appearing to read 'G Hands', with a stylized flourish at the end.

GREG HANDS MP, MINISTER OF STATE FOR TRADE POLICY

DEPARTMENT FOR INTERNATIONAL TRADE

