

Joint Report on the EU-Canada Scoping Exercise
March 5, 2009

CHAPTER ONE

OVERVIEW OF ACTIVITIES

At their 17th October 2008 Summit, EU and Canadian Leaders agreed to work together to "define the scope of a deepened economic agreement and to establish the critical points for its successful conclusion, particularly the involvement of Canada's provinces and territories and the EU Member States in areas under their competencies".

The Joint Scoping Group met three times, on 20th November, 3rd December and 21st to 23rd January and engaged in substantive discussions on the subjects relevant to any future deepened economic agreement. The thrust of these discussions, together with the Group's findings, are set out in Chapters 3 and 4 below.

CHAPTER TWO

OPPORTUNITIES FOR ENHANCED TRADE AND INVESTMENT BETWEEN THE EU AND CANADA

The well-being and prosperity of the EU and Canada depend on healthy international trade and investment relationships and on the ability of Europeans and Canadians to succeed in all areas of global commerce. The EU is the world's largest exporter of goods and services, while one in five Canadian jobs is estimated to be linked to trade. Their openness to the global economy is a key factor underlying this prosperity and is a powerful stimulus to competition, innovation and growth. In today's economic climate, maintaining and expanding open markets is more important than ever.

Canada and the EU remain committed to advancing negotiations at the World Trade Organization (WTO) within the context of the Doha Development Agenda, with a view to reaching a comprehensive, ambitious and balanced agreement that will foster sustainable development and to which all WTO members must contribute.

At the same time, shared interests have led Canada and the EU to closely consider how to strengthen the bilateral economic partnership. For as good as it is, the EU-Canada economic relationship is capable of further improvement. Barriers remain in certain areas that prevent it from reaching its full potential. Events in the global economy over the last few months have proven that cooperation among trading partners is key.

Economic relations between the EU and Canada are long-standing. Bilateral goods and services trade totalled over CDN \$109.4 billion or €70.3 billion in 2007, while investment levels are high and continue to rise. The EU is Canada's second most important goods trading partner, while Canada is the EU's 11th most important goods trading partner. The Canada-EU bilateral trade relationship is characterized by a high degree of complementarity. The investment relationship is even stronger: the EU is Canada's second most important investment partner and Canada the EU's fourth most important investment partner.

The EU-Canada economic relationship is currently overseen by a cooperative framework established in 1976, the EU's first such arrangement with an industrialised country. The framework established a structure for ongoing dialogue, with an annual review of economic cooperation. Since that time, a number of sectoral agreements have been concluded, and others are under negotiation; however, no single, broad-based and binding agreement exists to address the EU-Canada economic relationship as a whole.

In October 2008, the EU and Canada released their joint study "Assessing the Costs and Benefits of a Closer EU-Canada Economic Partnership". The study indicates that the liberalisation of trade in goods and services will bring benefits both to the EU and to Canada.

The results of the economic modelling, which only relate to the impact of removing readily-quantifiable factors affecting bilateral trade, provide a lower bound to the potential gains from an EU-Canada agreement. The study estimates annual real income gains of approximately €11.6 billion for the EU and €8.2 billion for Canada within seven years following the implementation of an agreement.¹ Liberalisation of trade in services contributes substantially to the GDP gains (50% of the total gains for the EU, and 45.5% of the gains for Canada); more limited but still significant gains derive from the elimination of tariffs on bilaterally traded goods (25% of the total for the EU and 33.3% for Canada). Total EU exports to Canada are estimated to go up by 24.3% or €17 billion, while Canadian bilateral exports to the EU are predicted to go up by 20.6% or €8.6 billion.

In addition, the study shows potential for improvement in a wide variety of areas ranging from labour mobility, including temporary entry for business persons, environment, regulatory cooperation and science and technology. This forward-looking analysis also demonstrates that there is significant potential to enhance the EU-Canada economic relationship on several levels.

Canada's provinces and territories are fully supportive of an ambitious and comprehensive Canada-EU economic partnership agreement. While the federal government negotiates and enters into international treaties, the provinces and territories are responsible for implementing the treaty obligations that fall within their jurisdiction, including through enacting legislation, as required. For this reason, the Government of Canada will provide a process for the participation of the provinces and

¹ The study used a computable general equilibrium model, whose baseline scenario includes assumed tariff reductions resulting from successful Doha negotiations.

territories and ensure that their views are fully taken into account in the development of Canadian negotiating positions, both before and during these negotiations.

A successful negotiation will include explicit commitments from provincial and territorial governments. These commitments will be incorporated into the agreement and provinces and territories will take the necessary steps to implement the provisions falling in their areas of competence. The provinces and territories will participate in the negotiations with a view to making binding commitments in all areas falling, wholly or in part, in their jurisdiction in any agreement to the full extent that European undertakings warrant.

The private sectors in both EU and Canada have shown strong support for an ambitious and comprehensive economic agreement, both publicly and in response to the consultations undertaken by both parties in the framework of the joint study. They believe advancing a closer EU-Canada economic partnership would send a powerful pro-growth signal to investors and businesses within the EU and Canada as well as internationally.

CHAPTER THREE

DISCUSSIONS ON A POSSIBLE DEEPENED ECONOMIC AGREEMENT

The Scoping Group discussed a number of specific areas of relevance to any future agreement, and was of the view that, given the objective of concluding an ambitious agreement, commitments should go beyond current WTO levels. The agreement should include, as a minimum, all the chapters of the most ambitious EU and Canadian bilateral economic agreements to date.

The thrust of the discussions of the Scoping Group, together with its recommendations/findings, are set out by area below. These recommendations/findings are without prejudice to the final outcome of negotiations for any future comprehensive economic agreement.

3.1. Trade in Goods

While tariff levels are generally low between the EU and Canada, the economic analysis undertaken in the context of the joint study indicated that between a quarter and a third of the overall benefits of any bilateral trade liberalisation would derive from tariff elimination.

The Scoping Group was of the opinion that, in response to Leaders' calls for an ambitious agreement and to the findings of the joint study with regard to the benefits of liberalisation, the level of any tariff elimination should be considerably more comprehensive and ambitious than required by Article XXIV GATT. No tariff lines should be excluded *a priori*.

The Scoping Group took the view that any agreement should include, in a form to be decided, provisions on rules of origin that are clear, as simple as possible, and leave little room for administrative discretion.

The Scoping Group recognised that any agreement should address the issues of agriculture export subsidies and state trading enterprises and assess any possible distortion of competition and barriers to trade and investment these issues could create.

It was also of the opinion that the possibility of including provisions related to emergency action and trade remedies should be examined.

Given the consensus on the need to substantially reduce non-tariff barriers to trade, the Group was of the view that any agreement should contain ambitious disciplines addressing these issues.

3.2. Sanitary and Phytosanitary Issues

The Scoping Group was of the opinion that any future agreement should include provisions on sanitary and phytosanitary (SPS) issues. In addition, consideration should be given to reaffirming, building on and enhancing the provisions and the implementation of the WTO Agreement on Sanitary and Phytosanitary Measures. The Group further recommended the establishment of a mechanism to address specific SPS issues not covered by the existing Canada-EU Veterinary Agreement.

3.3. Technical Barriers to Trade

The Scoping Group was of the opinion that any future agreement should include provisions on technical barriers to trade (TBT). Such provisions should reaffirm, build on and enhance the provisions of the WTO Agreement Technical Barriers to Trade, including in the areas of transparency, international standards, technical regulations and conformity assessment. The Group noted the importance of sharing experiences and promoting joint efforts to enhance good regulatory practice in implementing the TBT Agreement, and recommended the establishment of a mechanism to address specific TBT issues.

3.4. Trade Facilitation

The Scoping Group was of the view that any future agreement should include a chapter on trade facilitation, which would complement and build upon trade facilitation provisions under negotiation at the WTO. The trade facilitation provisions should include as objectives efficiency, transparency, cooperation and consultation. The Scoping Group further recommended that account should be taken in the drafting of provisions on trade facilitation of the challenges faced by small and medium-sized enterprises.

The Scoping Group was also of the view that account be taken of the existing *Agreement between Canada and the European Community on Customs Cooperation and Mutual Assistance in Customs Matters* in the development of trade facilitation provisions with a view to avoiding duplication.

3.5. Customs Procedures

The Scoping Group was of the view that any future agreement should include, in a form to be decided, provisions on customs procedures which allowed for the effective and transparent administration of the rules of origin. Such procedures should help ensure compliance with the rules of origin without creating unnecessary obstacles to trade.

The Scoping Group was also of the view that account be taken of the existing *Agreement between Canada and the European Community on Customs Cooperation and Mutual Assistance in Customs Matters* in the development of customs procedures with a view to avoiding duplication.

3.6. Cross-border Trade in Services

The Scoping Group was of the opinion that the liberalisation of trade in services should form an important part of any agreement, and that the objective of any agreement should be substantial sectoral coverage, measured in terms of numbers of sectors, volume of trade and modes of supply. Any agreement should provide for a considerably higher level of ambition than the current WTO commitments, with the aim of achieving market access, non-discrimination and compliance with Article V GATS. In this regard, the Scoping Group took the view that the services provisions of any agreement should apply to measures taken by all levels of government, as well as non-governmental bodies, in the exercise of powers delegated by any level of government. No mode of supply or services sector should be excluded *a priori*.

The Scoping Group was of the opinion that regulatory provisions would be a useful complement to market access and non-discrimination and would play a positive role in facilitating the provision of cross-border trade in services.

The Scoping Group was further of the view that, complementing the cross-border trade in services, any future agreement should include provisions to facilitate mutual recognition of professional qualifications.

3.7. Investment

Whilst bilateral investment flows already represent a notable share of both parties' total foreign direct investment (FDI), the Group agreed that there were opportunities for increasing bilateral investment flows.

The scope of the negotiations on investment should cover pre- and post-establishment in all sectors in order to improve market access and provide for the non-discriminatory treatment of investors and investments, and to improve transparency. The scope should include substantive and procedural obligations at both the central and sub-central government levels.

3.8. Government Procurement

The Scoping Group was of the opinion that any agreement should substantially improve access to public procurement markets aiming to achieve full coverage of central and sub-central government procurement in all sectors, to ensure *inter alia* treatment no less favourable than that accorded to locally-established suppliers.

Language on transparency should be added in order to provide insight into laws, regulations, procedures and practices, in a manner to provide business communities with easily accessible information on public procurement.

The Group took the view that the starting point on procedural commitments should be the November 2007 revised text of the Government Procurement Agreement.

3.9. Regulatory Cooperation

The Scoping Group recognised the importance of regulatory cooperation in the bilateral relationship as well as the desire of EU and Canadian business communities for enhanced regulatory cooperation, with a view to avoiding trade barriers resulting from unnecessarily divergent regulatory approaches between the EU and Canada. The Group noted that the existing framework was voluntary in nature and focussed on regulatory cooperation in the goods sector at central government level. The Group was of the view that any agreement could usefully include provisions on regulatory cooperation in specific areas that complemented the voluntary framework.

3.10. Intellectual Property, including Geographical Indications

The Scoping Group recognised that the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) sets minimum levels of protection for intellectual property (IP) rights, and was of the view that any EU-Canada agreement should substantially improve on all categories of IP rights where need for increased protection and/or enforcement is identified. Furthermore, any agreement should establish and/or maintain very high standards of protection and enforcement of IP rights.

The Scoping Group was further of the opinion that intellectual property provisions in any future agreement should cover, *inter alia*, broad protection of geographical indications.

3.11. Movement of Persons

Recognising the mutual interest in facilitating the legitimate temporary movement of persons related to bilateral trade and investment, the Group was of the view that provisions on such mobility should be included in any agreement.

3.12. Competition Policy and Other Related Matters

The Scoping Group recognised that the 1999 *Agreement between the Government of Canada and the European Communities regarding the Application of their Competition Laws* provided a good basis for cooperation between competition authorities and noted that exploratory talks aimed at improving the exchange of information between competition authorities were underway.

The Scoping Group noted that any agreement should address related disciplines including state aid as well as disciplines for designated monopolies and state/public enterprises to ensure that they do not distort competition and create barriers to trade and investment.

3.13. Institutional Arrangements and Dispute Settlement

The Scoping Group was of the opinion that any agreement should include institutional provisions for its effective administration, including a binding state-to-state dispute mechanism as well as appropriate mediation mechanisms.

3.14. Sustainable Development

The Scoping Group was of the view that it would be appropriate to address sustainable development issues through provisions on the environment and labour rights, including the core labour standards embodied in the 1998 International Labour Organization (ILO) Declaration, as well as provisions in support of internationally recognized standards of corporate social responsibility.

Such provisions could include, *inter alia*: the right to regulate while aiming for high levels of protection; effective enforcement of environment and labour laws; a commitment to refrain from waiving such laws in a manner that affects trade or investment; a framework for cooperation; public involvement; and mechanisms to monitor and address disputes.

Additionally, the Scoping Group took the view that the early liberalisation of environmental goods and services should be provided for as part of market access commitments.

3.15. Other Areas

The Scoping Group noted that, in addition to the areas outlined above, there were many other areas where the EU and Canada should continue to work together both bilaterally and in a multilateral context to advance their economic relationship. The Group was of the view that the scope of any agreement could be expanded to include any of these areas, where there was mutual interest in doing so.

CHAPTER FOUR

FINDINGS

The Scoping Group took account in its deliberations on the scope of a deepened economic agreement the conclusions of the EU-Canada joint study "Assessing the costs and benefits of a closer EU-Canada economic partnership", in which a stronger, ambitious and balanced economic partnership was found to be mutually advantageous, contributing to increased prosperity in both markets. A mutually-held understanding of the Group, as confirmed by the study's findings, was that the maximum degree of benefit to both sides would result from a maximum degree of liberalisation, as well as from the inclusion in an agreement of areas other than trade, where there was joint interest in doing so.

Following the discussions held in the context of the Joint EU-Canada Scoping Exercise between November 2008 and February 2009, the Scoping Group formed the view that, should a decision be taken to launch negotiations for an EU-Canada economic agreement, the optimal scope of such an agreement would be that described in sections 3.1 to 3.14 of Chapter 3 of the present document. With regard to further areas for possible inclusion in an agreement, it was of the opinion that, as indicated in section 3.15 of the present document, the scope could be expanded to include other areas where there was mutual interest in doing so.

Regarding the establishing of the critical points for the successful conclusion of an agreement, which were also examined in course of the Scoping Exercise, the Group acknowledged the "Statement of the Council of the Federation – Support for the Negotiation of a New and Comprehensive Economic Agreement with the European Union" issued by Canada's Council of the Federation, in which 12 of the 13 provinces and territories confirm their commitment to the negotiation and implementation of an accord.