European Commission services' position paper on the trade sustainability impact assessment of a Comprehensive Economic & Trade Agreement between the EU and Canada

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Introduction

This paper sets out the European Commission services' position on the Trade Sustainability Impact Assessment (SIA) of a Comprehensive Economic and Trade Agreement (CETA) between the European Union (EU) and Canada. The Trade SIA study was commissioned by the European Commission's Directorate General for Trade and was carried out by an independent consultancy company, Development Solutions Europe Limited.

Negotiations for the Comprehensive Economic & Trade Agreement (CETA) with Canada started in 2009 and finished in 2014. Following the process of legal scrubbing and translation, as well as discussions with Canada which resulted in the integration of further elements of the EU's reformed approach to investment protection and investment dispute resolution into CETA in 2016, the Commission proposed the signature, provisional application and conclusion of CETA to the Council on 5 July 2016. Council approval of CETA was confirmed on 28 October 2016 and the agreement was signed by the EU and Canada alongside its companion Strategic Partnership Agreement (SPA) on 30 October 2016. At this occasion, the EU and Canada also adopted a Joint Interpretative Instrument (JII) which explains in a clear and unambiguous way certain provisions of CETA, such as the right to regulate, public services, labour and environmental standards, and investment protection. The JII has legal force in the sense of Article 31 of the Vienna Convention on the Law of Treaties, and can be relied upon in future by anyone who needs to interpret the agreement, including the Investment Court. Following the Council's approval, the European Parliament gave its consent to CETA on 15 February 2017. Provisional application of the agreement will begin as soon as Canada has notified that it has completed its domestic legal procedures. CETA will need to be ratified at national level in each Member State before its full and definitive entry into force.
The final Trade SIA report is available on DG Trade's website and consists of nine sections: 1) Background information on the CETA negotiations and on the Sustainability Impact Assessment; 2) Methodology for the SIA study; 3) to 6) Assessment of the potential economic, social and environmental impacts of trade liberalisation under CETA in which sectoral assessments are also included in 4) to 6); 7) Assessment of cross-cutting issues; 8) Policy recommendations; 9) Conclusions.

This position paper in response to the SIA is only being issued now to take proper account of the changes made to the investment protection and investment dispute resolution parts of CETA, which were agreed in 2016.

2. Framework for the Trade SIA relating to the negotiation of a trade agreement between the EU and Canada

2.1 Objectives of the Trade SIA

The European Commission services have been committed to conducting Trade SIAs as part of its trade policy-making process since 1999. The Trade SIA is designed to provide trade negotiators and policy-makers with an evidence-based ex-ante assessment of the potential economic, social and environmental impacts that are likely to arise from a proposed change in trade policy.

The Trade SIA should assess how the trade and trade-related provisions of the agreement under negotiation could affect economic, social, environmental issues in the EU and Canada in particular, but also in other relevant countries, and should propose measures (trade or non-trade) to maximise the benefits of the agreement and prevent or minimise potential negative impacts. The Trade SIA is also an important tool for consultation and communication with stakeholders.

2.2 Methodology of the Trade SIA

The methodological framework for the Trade SIAs is described in the EC’s Handbook for Trade Sustainability Impact Assessment (EC, 2006).

1 http://ec.europa.eu/trade/analysis/sustainability-impact-assessments/assessments/
The SIA methodology is designed to provide trade negotiators and policy-makers with an evidence-based ex-ante assessment of the potential economic, social and environmental impacts of alternative trade liberalisation scenarios.

The Trade SIA analysis for the EU Canada CETA negotiations was built on the following four different liberalisation scenarios reflecting a range of potential final outcomes of the negotiation:

- **Scenario A**: Limited liberalisation of agriculture and processed agricultural products (PAPs) resulting in an overall liberalisation of 95% of trade in goods in terms of tariff lines and a less ambitious liberalisation of services. The reduction in tariffs is achieved using a sensitive list approach whereby there are no tariff cuts for meat products (incl. beef and pork) in the EU and no tariff cuts for dairy products and ‘other food products’ in Canada; all other agriculture and industrial products are fully liberalised. For services, liberalisation is based on the service trade cost reductions modelled in the 2008 Joint Study\(^2\), multiplied by a factor of 0.6.

- **Scenario B**: Limited liberalisation of agriculture and PAPs resulting in an overall liberalisation of 95% of trade in goods in terms of tariff lines and ambitious liberalisation of services. The reduction in tariffs is modelled in the same manner as in Scenario A, while liberalisation in services is based on the service trade cost reductions modelled in the 2008 Joint Study.

- **Scenario C**: 100% liberalisation of goods and less ambitious liberalisation of services, using the services trade cost reductions employed in the 2008 Joint Study multiplied by a factor of 0.6.

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\(^2\) A joint study entitled *Assessing the Costs and Benefits of a Closer EU-Canada Economic Partnership*, conducted by the Government of Canada and the EU and completed in 2008 (thus referred to as the "2008 Joint Study"), incorporates tariffs and nontariff barriers into an analysis to assess the costs and benefits of an EU-Canada CETA. It uses a Computable Generic Equilibrium (CGE) model to estimate the potential economic effects of the full removal of tariffs on bilateral trade in goods, a partial reduction of the cost of non-tariff barriers on trade in goods, and a partial liberalisation of bilateral trade in services.
• **Scenario D**: 100% liberalisation of goods and ambitious liberalisation of services, using the services trade reductions cuts employed in the 2008 Joint Study.

The Trade SIA for the EU Canada CETA has used a variety of sources to inform the qualitative and quantitative sustainability impact analyses for specific indicators. The sources of evidence include formal modelling (Computable Generic Equilibrium (CGE)\(^3\), econometric E3MG\(^4\) and investment gravity modelling) results, and quantitative and qualitative evidence collected from desk research. Consultation is a key element of the Trade SIA, whereas it ensures the quality, credibility and legitimacy of the SIA process. A range of consultation methods have been deployed at all stages of the SIA, including electronic dissemination and feedback gathering, meetings with civil society, workshops, questionnaires and interviews with stakeholders.

A causal chain analysis has been applied to the evidence base in order to estimate the potential impact on key economic, social and environmental indicators.

3. **Overview of the Consultants' conclusions**

3.1 **Economic impacts**

According to the consultants, an EU-Canada trade agreement is expected to lead to overall gains in welfare, real GDP, total exports and real wages in both Canada and the EU over the long-term. While these gains in both CETA parties are expected under all of the four liberalisation scenarios modelled in the economic assessment, the gains are expected to be higher under an agreement that offers the highest degree of tariff and services liberalisation. Third countries are estimated to experience minor degrees of welfare loss as a result of the agreement, though the overall impact on these countries is insignificant.

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\(^3\) CGE models are a class of economic models that use actual economic data to estimate how an economy might react to changes in policy, technology or other external factors.

\(^4\) E3MG is an econometric model covering the world that analyses the link between energy, environment and economy-related policies. The model provides a framework for evaluating policies in the long run but also indicates potential short-term effects.
**Welfare improvement** is led by gains from services trade liberalisation in the scenarios with more ambitious cuts in services (scenarios B and D), whereas it depends more on cutting tariffs on goods in the scenarios with less ambition in service liberalisation (scenarios A and C). The largest gain in GDP is found to be achieved under the most ambitious scenario, again suggesting that greater liberalisation will produce the greatest benefit to both sides.

Both the EU and Canada are expected to experience a rise in **total exports**. However, the reallocation of resources towards expanding sectors may imply reduced total exports in some sectors over the long-term. The report notes that in particular a liberalisation of services appears to stimulate an increase in exports; and the consultants point out that these results are probably underestimated as they do not account for exports that occur via sales of foreign affiliates (mode 3 trade), which serve an important role in bilateral trade in services between Canada and the EU. Both Canada and the EU are expected to experience improvements in their overall balance of trade over the long-term.

Sector-specific analyses show that the **services sector** has the potential to generate the greatest economic gains for both Canada and the EU, though this outcome is dependent on a CETA that achieves a significant amount of liberalisation. In particular, both Canada and the EU would benefit from a CETA that provided a high degree of liberalisation in transport services, telecom and business services. At the same time, the consultants come to the conclusion that a greater degree of liberalisation can result in a less beneficial outcome for some industrial or agricultural products because expansion in services will stimulate resources to move out of these sectors and into the services sector over the long-term.

Regarding **industrial products**, the existing tariffs (Most Favoured Nation tariffs) applied by the EU and Canada are already low in most sectors. This would likely limit the impact that tariff liberalisation through CETA will have in these areas. Examples studied in the consultants’ report are the sectors of mining, metal manufacturing, oil, coal or forest-based industries in Canada and the EU. In the few sectors where tariffs are higher, the consultants point to the long-term benefits of removing them, for example in the case of the automotive or textile industries.

Regarding **agriculture, processed agricultural products (PAPs) and fisheries**, the consultants come to the conclusion that Canada could realise significant gains from improvements in access to the EU market for beef and pork products. This could lead, according to the consultants, to a reduction of employment for domestic producers.
European Commission position paper on the CETA SIA

and processors in the EU. The Commission services consider that the final CETA deal on beef protects EU producers as the additional access granted to Canada represents only 0.6% of the EU's total beef consumption and will be phased in gradually over 5 years and monitored closely. Furthermore, in the event of any imbalance in the market for an agricultural product, a "safeguard clause" may be activated, which may allow a temporary decrease of the Canadian quotas. This offers an additional protection to EU farmers in respect of beef and pork quota concessions in CETA. On the other hand, EU dairy producers could experience significant increases in output and exports with the removal of tariffs in Canada; though this would coincide with decreases in production and employment in the Canadian dairy sector. The final CETA deal includes a 128% increase in EU quota access to the Canadian cheese market promises benefits for EU producers, and like the beef and pork quotas on the EU side, will be phased in over five years to minimise negative impacts. The overall impact for agricultural products would be influenced by the rules of origin (RoO) that are agreed to under CETA. Removing tariffs for fisheries products would likely lead to an increase in exports for Canada, yet doing so could affect the EU Overseas Countries and Territories (OCTs) of Saint-Pierre-et-Miquelon (SPM) and Greenland. For the economies of these two OCTs, the changes would be minor in value, but could have an impact due to their limited industrial diversification of their economies and their reliance on fisheries as a source of exports. The final CETA deal liberalises all tariffs on fisheries products. However, the Commission accepted the request of Saint Pierre et Miquelon for a derogation to its rules of origin for specific fisheries products.

Mutual commitments on **Government Procurement (GP)** through CETA would have, in the opinion of the consultants, a variety of positive economic impacts, particularly in terms of competitiveness and increased market share for EU companies. Regarding **Intellectual Property Rights (IPR)**, the study assumed that CETA will lead to an upward harmonisation and will call primarily for change in Canadian IPR laws. Such IPR-related provisions would have a minor positive economic impact both on Canadian and European GDP growth. According to the consultants, an IPR chapter in CETA that would strengthen IPR protection would also have impacts on employment and policy space for Canada. The impact on employment will vary between sectors and would accrue, for instance, out of reduced piracy costs which would then increase jobs. However, the consultants predict that the overall impact of the CETA IPR provisions on employment in Canada would be minor. The impact on policy space would depend on the possible maintenance of certain exceptions in CETA especially for education and pharmaceutical products. The final CETA deal maintains the balance between the need for innovation and investment in new and improved medicines and keeping these medicines affordable for citizens. For the EU, the economic impact will be
positive even if minor. Positive economic impacts would mainly arise from the protection of geographical indications that would benefit the agro-food industry in the EU. It would however be small, due to the fact that the Canadian market is relatively small for European products benefitting from IPR protection as well as to the fact that most counterfeited goods do not originate in Canada.

Several key impacts are also identified in the areas of investment and competition policy. The economic impact of CETA on investment in Canada will likely be positive, and could be of a ‘notable’ magnitude. Concerning competition policy, the study expects that removal of discriminatory practices of the Canadian liquor control boards under CETA would support economic gains by encouraging competition.

3.2 Social impacts

According to the consultants, CETA could have a positive social impact where it includes text devoted to improving implementation and ratification of the International Labour Organisation’s (ILO) core labour standards and Decent Work Agenda. In particular, Canada could see its standards and rights improved with respect to collective bargaining and freedom of association with provisions that require ratification of the ILO Convention n° 98 (Right to Organise and Collective Bargaining Convention, 1949), which provides legally binding measures on such rights.

In the EU, the real wages for unskilled and skilled labour are expected to increase slightly over the long-term under all four scenarios. For Canada, the rises in wages will be much higher across all scenarios.

At the sectoral level, the Trade SIA does not expect that CETA’s economic impact on agriculture, PAPs and fisheries will lead to a pronounced social impact in either Canada or the EU. It is unclear how the expansion in agricultural employment would impact quality and decency of work. In Canada, workers in agriculture are generally subject to provincial regulation and are often regulated differently from workers in other sectors.

According to the Trade SIA, the social impact in the industrial sector is likely to be limited. The social impact for the services sector is expected to be positive, with CETA expected to lead to the creation of services jobs in both Canada and the EU.

Regarding government procurement (GP), the Trade SIA reports that potential social impacts of the opening of the procurement markets will be mixed. The consultants are
of the opinion that CETA may create some positive impacts in terms of wider choice of GP service providers, although available evidence does not clearly indicate that a GP chapter in CETA would significantly affect quality of public goods and services, including water delivery and management, health and education. The final CETA agreement and accompanying Joint Interpretative Instrument confirm that the provisions on government procurement do not affect the EU and Canada's right to manage public services as they see fit. Overall, CETA’s effect on decency and quality of work in the GP market would be limited by the already strong domestic laws and institutions already in place in the EU and Canada. In terms of intellectual property rights (IPR), raising levels of IPR protection in Canada will, according to the study, likely have some social impacts, as product innovation as well as the percentage of GDP spent on health care could increase.

In the areas of investment, the consultants estimate that as a whole the social impacts will be mixed. However, the net effect of these impacts is likely to be relatively limited. Increased investment under CETA might be channelled into creating jobs in Canada and the EU that score higher on quality and decency of work indicators, although it may also create some degree of worker displacement and wage inequality. In addition, the consultants argue that the introduction of an investor-to-state dispute settlement (ISDS) mechanism would lead to potential policy space reductions. The Commission services do not share this view, as will be explained further below.

Labour mobility provisions in CETA focused on workers in professional business services could, according to the consultants, result in economic gains in the form of a more efficient allocation of skills and increased productivity in Canada and the EU as well as increased innovation that could lead to social benefits.

3.3 Environmental impacts

According to the consultants, an EU-Canada Agreement could have an impact on the environment, particularly in certain sectors. Increased agricultural production could lead to a higher degree of intensification and use of chemical inputs, while increased beef production could lead to greater herd size and production of methane. However, if production increases in crops such as wheat could be achieved using more sustainable practices, such as no or reduced till, the negative environmental impact could be mitigated because of lower emissions and chemical inputs. The consultants suggest that this trend towards agricultural practices that are more beneficial for the environment could be further encouraged through Canadian-European cooperation and European preferences for sustainable products.
The environmental impact associated with energy and extractive industries is likely to be limited, though it could be exacerbated if the agreement leads to significant increases in foreign direct investment (FDI) in Canada’s oil sands and mining industries since these sectors are environmentally intensive. Growth of trade would likely increase the greenhouse gas (GHG) emissions associated with transport. At the same time, the vast majority of additional trade would be expected to occur through maritime transport, which has a lower environmental impact than land or air transport. In addition, the impact could be mitigated if CETA helped to facilitate the development of Canada’s short sea shipping industry, and led to a replacement of land transport by maritime transport.

According to the study, enhanced IPR protection is unlikely to have significant environmental impacts.

In addition to their economic, social and environmental assessment, the consultants propose a set of policy recommendations, which are presented in chapter 5.

4. The Commission services’ views on the impacts identified by the consultants

4.1 Economic aspects

Generally, the Commission services agree with the consultants’ assessment of CETA’s likely economic impacts and, to a large extent, has taken these assessments into consideration when formulating its negotiation positions. The Commission services would nevertheless like to make the following specific observations (without prejudice to future comments the Commission services may have):

The Commission services share the consultants’ view that an ambitious agreement offers the most beneficial overall outcome since only an ambitious CETA can bring the full range of benefits expected. As the study acknowledges, this could particularly benefit SMEs, for whom the advantages of cheaper and easier access to the Canadian market may allow some to export to Canada for the first time. It is important to note that the quantitative analysis on which the consultants’ recommendations are founded has as its baseline the successful completion of the Doha round. Absent results on tariffs in the Doha Development Agenda, the estimated overall gains for the EU and Canada are expected to be even larger than those reported in the study. Moreover, potential effects linked to the global economic and financial crisis, which...
could not be covered in the SIA which started in July 2010, could influence the economic background against which the effects of a real CETA would have to be seen and measured. In addition, the consultants do not model the effects of investment liberalisation within the CGE model, due to data limitations. Investment liberalisation could lead to further welfare gains as a result of greater trade through foreign affiliates and enhanced productivity.

In terms of agricultural products, the Trade SIA would – in hindsight – have benefited from a wider and deeper economic analysis in light of the weight the agriculture sector has taken in the dynamic of the negotiations. More attention could also have been paid to a wider range of processed agricultural products (PAPs), given their importance to trade between the EU and Canada.

In terms of industrial products, the Commission services broadly concur with the analysis of the consultants. In hindsight, more attention could have been paid by the consultants to recent developments and new opportunities with respect to the raw materials and forest-based sectors. The final CETA agreement contains dedicated provisions, in the sustainable development chapter, on the conservation and sustainable management of natural resources.

Regarding fisheries, the EU could realise some benefits by the removal of Canadian non-tariff measures (in particular in the Provinces) "pertaining to licensing for purchasing, processing and transporting fish" as well as the removal of restrictions on foreign investments in fishing enterprises. A quantification of the impacts of such removals would have been useful. The Trade SIA would also have benefited from an in-depth assessment of the impact of CETA on the two EU OCTs of Saint-Pierre-et-Miquelon (SPM) and Greenland. However, because of the application of a multi-region equilibrium model, individual data specific to these two OCTs was not available. Therefore, the assessment of the impact on SPM and Greenland was only very broad and general. The qualitative assessment rests on the assumption that Canadian fish products would become more competitive. Yet an analysis of the potential dynamics on the EU market itself and the effects for the products of SPM and Greenland is not provided in the SIA.

With respect to intellectual property rights (IPR), the Commission services consider that the consultants should have taken into consideration the fact that Canada is mentioned in both the EU list of "priority countries" (regarding IPR matters) and in the "priority watch list" of the USA's "special 301" report. The Trade SIA statement that "Canada offers a standard level of IPR protection" seems to contradict the list of gaps.
on IPR protection set forth by the consultants in the first paragraph of the summary of chapter 7.2. As stated by the consultants, "both Canada and the EU are currently considering major changes in their IPR system independently from CETA" (p.319). The IPR chapter of CETA is therefore likely to have considerably less impact than any of the autonomous changes in the legislation. As a result, only a fraction of the future changes to Canadian IPR legislation will result from the CETA negotiation itself. This is especially the case for copyright issues, which in the Commission services’ opinion should rather not have been addressed in the Trade SIA because Canada carried out autonomously a modernisation of its relevant legislation. Apart from this, certain allegations about the effects of potential future CETA IPR provisions, for example that some of these disciplines could lead to higher consumer prices in Canada, are not well substantiated and can be misleading. And contrary to the consultants’ statements, there are no major IPR changes planned within the EU, except for the future unitary EU patent (which in any case does not change anything in the level/scope/strength of patent protection). Other claims made in the study, for example that intellectual property rights restrict competition and authorise holders to maintain higher prices, disregard the benefits of effective IPR systems, such as fostering innovation or providing guarantees to customers regarding health and safety aspects. Besides, some academics also take the view that IPR actually promotes competition.

4.2 Social aspects

Generally, the Commission services agree with the consultant’s assessment of the potential social impacts of CETA and, to a large extent, has taken these assessments into consideration when formulating its negotiation positions. The Commission services would nevertheless like to draw attention to the following (without prejudice to future comments the Commission services may have).

The analysis performed is essentially econometric and would have benefited from a more comprehensive approach to the assessment of potential impacts. It essentially relies on the quantitative estimates of the likely economic impacts while the qualitative analysis is more limited or is less substantiated.

Regarding the economic and social assessment of the impact on fisheries (employment and worker displacement), the Commission services would have welcomed an analysis or at least a discussion of the economic and social effects of removing non-tariff barriers in the fisheries sector. Anecdotal evidence exists to suggest that fishermen from the Canadian Atlantic provinces (where NTBs to trade in fisheries products are in place) could benefit from the removal of these barriers.
Without regulations prohibiting the sale of some raw materials outside these Atlantic Provinces, fishermen could get higher prices from foreign buyers. As regards the EU fisheries sector, even though the likely economic and social impacts in the EU could be regarded as "minimal", a more refined analysis (e.g. at regional or at sea-basin level) would have been welcomed. EU fisheries' jobs are also concentrated in a number of regions, some of which are very dependent on fisheries.

In the area of services, the Commission services concur with the assessment of the consultants that the impact of CETA is likely to be mutually beneficial, creating jobs in various services sectors in both the EU and Canada.

Regarding investment, the study's social assessment indicates that it is likely that CETA will have a mixed impact. This impact is also supposed to be relatively limited and at least in part attributable to the effects of CETA provisions in other areas, for example the liberalisation of services or other cross-cutting issues. The Commission services share this view. For this reason, a full assessment of the social impact of investment commitments is dependent on the precise negotiation results in these other areas. It is also important to note that it is the Commission services’ objective, as reflected in its communication "Towards a comprehensive European international investment policy" of 7 July 2010, that any commitments regarding investment in CETA will be consistent with the other policies of the EU and its Member States, including on sustainable development.

The study puts a strong emphasis on possible policy space reductions, mainly caused in the eyes of the consultants by the introduction of an investor-to-state dispute settlement (ISDS) mechanism. The key objective of the EU's investment policy is to offer protection to investors, while at the same time continuing to allow the EU, its Member States and its trade partners to adopt and enforce measures necessary for the pursuit of legitimate public policy objectives (such as social, environmental, cultural diversity, health and safety objectives). It was therefore a key negotiation objective to provide for the right balance in CETA between the right of states to regulate and the rights of investors. This is reflected in a dedicated article reaffirming the right of governments to regulate in pursuit of legitimate public policy objectives and in precisely drafted investment protection standards, including an exhaustive list of elements that may constitute a breach of fair and equitable treatment and a detailed annex clarifying the concept of expropriation. What's more, CETA introduces an independent investment court system, consisting of a permanent tribunal and an appeal tribunal competent to review decisions of the tribunal, where dispute settlement proceedings will be conducted in a transparent and impartial manner. The
Commission services thus find it difficult to share the study's conclusions about the assessment of the likely social impact in this regard, all the less so when the study itself, building on a comparison with NAFTA, clearly indicates that there is no available evidence which convincingly suggests that the ISDS mechanism in NAFTA has created significant policy space reductions.

4.3 Environmental aspects

Generally, the Commission services agree with the consultant’s assessment of CETA's likely impacts on the environment and, to a large extent, have taken these assessments into consideration when formulating its negotiation positions. The Commission services would nevertheless like to make the following specific observations (without prejudice to future comments the Commission services may have outside of the SIA):

Regarding agriculture, the Commission services agree that more sustainable practices in the production of crops such as wheat could mitigate the potentially negative environmental impact of an agreement thanks to reduced emissions and chemical inputs.

With respect to energy and extractive industries, the Commission services share the consultants' view that the environmental impact associated with these industries is likely to be limited. Nevertheless, since these sectors are environmentally intensive, the Commission services also take note of the consultants’ opinion that impacts could be exacerbated if the agreement leads to significant increases in foreign direct investment in Canada’s oil sands and mining industries. The Commission services further concur with the consultants that the greenhouse gas (GHG) emissions associated with transport are likely to be limited since the expected increase in trade will be conducted predominately through maritime transport. Indeed, since the negotiations were completed, the EU and Canada have both made commitments under the Paris Agreement which should more than mitigate any potential environmental impacts of CETA. These commitments are highlighted in the Joint Interpretative Instrument which accompanies the agreement.
5. The Commission services' views on the policy recommendations made by the consultants

The consultants list a set of trade-related and cooperation-related policy recommendations with the purpose of enhancing the positive impacts and preventing or mitigating the negative impacts that they have identified in their study. The main recommendations, as presented in the Trade SIA's executive summary and the Commission services' comments, are presented in this chapter.

5.1 Agricultural and processed agricultural products (PAPs) and fisheries

a) Consultants' policy recommendation:

- Establish an appropriate timetable for the phased reductions in tariffs and non-tariff barriers in beef, pork, dairy and fish and seafood. Consult with representatives from Saint-Pierre-et-Miquelon and Greenland to determine which fisheries products are sensitive and how liberalisation of these products could impact their industries.
- Rules of origin should be carefully considered in the negotiations, with a special group of EU and Canadian officials formed to deal with the issue. Special consideration should be given to beef and pork as well as food preparations containing sugar.
- A framework should be established to formalise enhanced regulatory cooperation and regular dialogue on Sanitary and Phytosanitary and Technical Barriers to Trade issues. Such cooperation should seek to prevent future barriers while providing greater transparency on packaging, labelling and certification requirements.
- Canada and European governments should cooperate on the exchange of best agricultural practices to reduce the environmental impacts associated with agricultural production.
- Promote fishery practices that are more sustainable through Canada-EU collaboration, while maintaining strict monitoring and implementation of quotas and Total Allowable Catch to remain within sustainable population levels and avoid depletion of fish stocks. More R&D should be invested into environmental risk of farmed fish, and into mechanisms such as the containment tasks, to reduce impact on wild species.
b) Commission services’ reaction:

The Commission services have taken note of the above set of recommendations. Several recommendations have been taken on board such as those on phased tariff reductions, rules of origin and a framework for enhanced regulatory cooperation. The EU and Canada have agreed to eliminate customs duties for imports of goods originating in the EU and Canada either when CETA comes into force or gradually within 3, 5 or 7 years for almost all goods.

For a few sensitive agricultural products, there is special treatment. These products have either been protected via liberalisation in the form of tariff quotas (beef, pork and sweetcorn, on the EU side, and cheeses, on the Canadian side) or excluded altogether from liberalisation commitments (chicken and turkey meat, eggs and egg products).

As suggested, the effect on the EU market of the quotas will be gradual, as their introduction is spread over five years and they will be closely monitored. It also goes without saying that Canadian exports will continue to have to meet all the EU’s food safety standards including its current legislation on GMOs and the prohibition of the use of hormones and antibiotics in food production. Furthermore the EU remains able to use its traditional tools in order to protect EU farmers, including the entry price system for fruits and vegetables which prevents imports from undercutting EU seasonal produce.

Fish and seafood will be subject to phased tariff reductions by the EU across the board for a maximum of seven years, whereas Canada has liberalised market access autonomously. There were exchanges with Denmark (concerning Greenland), France, and Saint-Pierre-et-Miquelon (SPM) to ensure a satisfactory outcome in the context of negotiations on fish and seafood.

As regards fishing practices and best agricultural practices it should be noted that CETA in its Sustainable Development chapter contains provisions in areas such as an engagement to promote the sustainable use and trade of natural resources such as forest and fish products as well as commitments with respect to the conservation and sustainable management of fisheries. Also, commitments to the effective implementation of Multilateral Environmental Agreements are contained in the Trade and Sustainable Development chapter.
A framework for enhanced voluntary regulatory cooperation and regular dialogue on SPS and TBT issues is foreseen in the CETA institutional structure. The framework provisions are complemented by specific cooperation objectives and enhanced transparency mechanisms laid down in the respective SPS and TBT chapters.

5.2 Industrial products

a) Consultants' policy recommendation:

- Establish an appropriate phasing-in period for liberalisation of textiles and transport equipment so that producers have time to adjust to changing incentives.
- Rules of origin should be carefully considered in the negotiations, with a special group of EU and Canadian officials formed to deal with the issue. Special consideration should be given to automotive products and textiles a study could also be conducted on the implications of rules of origin policies being negotiated.
- Cooperation between companies in the energy and minerals sectors could help to produce sound environmental governance across the EU and Canada, and also have important spill-over effects in third countries. This could include exchanges of information, technology transfers, involvement of public-private initiatives from both sides and, in the long run, the formulation of a common energy policy.

b) Commission services’ reaction:

The EU and Canada sought a far-reaching, ambitious outcome on tariffs, including textiles and transport equipment. The Commission services have taken note of the recommendation related to transitional periods. For a limited number of automotive products and for ships transition periods have been agreed. As regards textiles more specifically, it was considered that it was appropriate to liberalise at entry into force on both sides.

Rules of Origin have been dealt with in CETA by a group of experts from Canada and from several Commission departments. Automotive products and textiles are indeed subject to special consideration, also in the light of the fact that rules in both sectors substantially differ between the EU and Canada, the Canadian rules generally being less stringent than the European ones in these sectors. As a compromise solution, and
in order to bridge the differences, it was agreed that as a general rule the EU rules of origin will be maintained for these products but that Canadian exports of the products in question can benefit from derogation. This derogation will however be limited in terms of volume. Any import from Canada exceeding the volume will have to satisfy the EU rule.

As concerns the minerals sector, the CETA negotiators have taken on board the idea of cooperation between the European Commission and the Canadian government by including a commitment to set up a bilateral dialogue on raw materials, including minerals, through CETA.

5.3 Services sector

a) Consultants’ policy recommendation:

- Restrictions on investment in telecom should be liberalised or removed completely, but should be accompanied by appropriate phase-in periods and policies to ensure that Canadian cultural objectives can continue to be met.
- Liberalise feeder services within Canada’s maritime transport services to increase infrastructural investments over the long-term while helping to improve Canada’s underdeveloped short-sea shipping industry.
- To increase bilateral trade and investment in services, measures should be taken to streamline the visa process for professionals seeking to work temporarily in Canada or the EU. Canada should review its requirements for ‘needs tests’\(^5\), for certain professionals under the Temporary Foreign Worker Program (TFWP), with specific attention towards facilitation of intra-corporate transfers between the EU and Canada.
- Negotiators should create a mechanism for fostering agreements on mutual recognition of professional qualifications.

b) Commission services reaction:

The Commission services take note and agree with several of the recommendations. The EU has obtained additional commitments from Canada in the telecoms sector, notably the binding of the current level of autonomous liberalisation with the

\(^5\) i.e. requiring a company to show that it is unable to satisfactorily fill a position.
application of a ratchet to capture any future liberalisation. It should be noted, however, that the Commission Services do not consider that there is a direct relationship between the liberalisation of telecoms and the achievement of Canadian cultural objectives. The EU has been able to fully liberalise telecoms without compromising its cultural objectives and would have expected Canada to be able to do so as well.

The Commission services fully support the recommendation to liberalise feeder services within Canada’s maritime transport services in order to increase infrastructural investments over the long-term while also helping to improve Canada’s underdeveloped short-sea shipping industry. Canada has agreed to provide access to certain feeding services for EU companies.

The recommendation regarding professionals seeking to work temporarily in Canada or the EU confuses immigration measures such as visas, with measures related to temporary work. These are separate issues. Visas and other entry procedures are a matter of immigration policy and are not the object of commitments in the context of trade agreements. The latter only cover the market access and non-discrimination treatment granted to service suppliers of the other party. They do not cover the procedures for that supplier to enter the territory of the other party. Both the EU and Canada attach importance to measures that facilitate the ability of intra-corporate transferees (ICTs) to work in each other's territory. This issue has been addressed in the context of CETA, through comprehensive commitments for ICTs on both sides.

The Commission services consider that the mutual recognition of professional qualifications contributes to widen market access for the cross-border provision of services and to facilitate the movement of professionals. The EU and Canada have therefore worked closely together in the context of CETA to create a solid framework for mutual recognition of professional qualifications.

5.4 Public procurement

a) Consultants' policy recommendation:

- Explicitly allow for social considerations in public procurement, including fair wages. Create a monitoring body to oversee that these allowances are not being abused.
• Allow for green procurement policies in all ‘standard’ forms in the General Notes of both Canada and the EU in the GP Chapter. Other specific language for environmental protection should be included.

• Explicitly allow set-asides for Aboriginals in Canada’s schedule in the GP Chapter; however, make such exceptions more stringent than the ones allowed in NAFTA and the Government Procurement Agreement (GPA).

• Do not include a full-stop prohibition on GP offsets for municipalities, but rather include an ‘offset justification provision’ pertaining exclusively to municipalities. Other offset measures should also be considered.

b) Commission services’ reaction:

With CETA, EU companies will get the opportunity to bid to supply goods and services for the significant Canadian public procurement market for tenders at all levels of government (whether federal, provincial or municipal). Canada has also agreed to make the tendering process more transparent by publishing all its public tenders (both federal and provincial) on a single procurement website. Canada’s government procurement commitments in CETA are the most ambitious Canada has ever granted.

At the same time, CETA ensures that procuring entities within the European Union and its Member States and Canada can continue to use environmental, social and labour-related criteria in accordance with the respective legislation, such as the obligation to comply with and adhere to collective agreements, in procurement tenders. So on "green procurement", the EU can maintain its existing green procurement policies.

Canada has requested set-asides for “aboriginals”, and the EU has accepted them in the negotiations. "Offset justification provisions", on the other hand, have not been considered due to the fact they are not allowed neither within the EU nor within the WTO Government Procurement Agreement (GPA). However, Canadian municipalities may still use offsets for procurement not covered by the agreement, in particular with regard to tenders with values below the thresholds agreed in CETA.

5.5 Intellectual property rights

a) Consultants’ policy recommendation:
To ensure a minimal level of flexibility, duplicate the language of TRIPs agreement article 7, 8, 13, and 30 as well as the language of the Declaration on the TRIPs Agreement and Public Health in the introduction of CETA’s IPR chapter.

The EU and Canada should cooperate to make sure that their agreed norms on enforcement become recognised globally as minimal standards, cooperate in multilateral fora (WHO, WIPO, WTO, etc.), in plurilateral settings (OECD, etc.) and bilaterally in their respective agreement with third parties.

To accelerate the entry of new medicines on the market and lessen the actual use of patent extensions, the EU and Canada should cooperate to fast-track marketing approvals for those drugs already approved by the respective regulatory agencies.

b) Commission services’ reaction:

The Commission services consider that duplicating existing TRIPs provisions to which both parties are bound would bring no added value, all the more that the EU-Canada agreement does not intend to remain below TRIPs standards, including those that provide for flexibilities. However, in CETA, as in all EU free trade agreements, the EU neither requests nor accepts provisions which would be contrary to or otherwise undermine the Doha Declaration on the TRIPS Agreement and Public Health and the CETA text includes a clear reference confirming the commitment of both Parties to this Declaration.

The Commission services mostly agree with the recommendation on cooperation. In addition, the Commission services have proposed an institutional structure that facilitates regular discussions on any relevant IPR issues after the conclusion of the CETA negotiation.

The Commission services are not opposed to the recommendation regarding the entry of new medicines on the market, but point out that marketing approval procedures are not a CETA issue. Marketing approvals are carried out by the health and regulatory authorities in charge on each side independently. Regarding patents, it should be noted that "patent extensions" is a misleading phrase since the mechanism of patent term restoration requested by the EU should not be seen as an instrument to

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6 WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights
extending the effective protection of pharmaceutical patents beyond the normal duration (20 years), but is, as the name says, a means to recovering that portion of the effective patent protection period that has been lost due to delays in official authorisation procedures.

5.6 Investment

a) Consultants' policy recommendation:

- Consider excluding ISDS from CETA and instead use a state-state enforcement mechanism like that in the US-Australia FTA.
- Consider a number of key issues when drafting dispute settlement expropriation language.
- Emphasise domestic dispute settlement even if ISDS is included in CETA.
- Exclude 'essential and basic' public services from investment commitments.
- A dispute settlement monitoring body/forum should be created.

b) Commission services’ reaction:

It is important to observe from the outset that the final text of CETA embodies the EU's reformed approach to investment, which the SIA published in June 2011 could not take into account. This reformed approach represents a significant break from the traditional approach to investment protection and investment dispute settlement in almost all the existing bilateral investment treaties worldwide. CETA ensures a high level of protection for investors, while fully protecting and upholding the right of governments to regulate and pursue legitimate public policy objectives. It removes ambiguities that made the old system vulnerable to abuses or excessive interpretations through precisely drafted provisions and a dedicated article on the right to regulate that will guide the interpretation of the investment protection standards. It also creates an independent investment court system, consisting of a permanent tribunal and an appeal tribunal that will conduct dispute settlement proceedings in a transparent and impartial manner.

Regarding the recommendation to consider excluding the proposed ISDS from CETA, the motivation behind the Union's new competence on investment is to ensure that EU investors abroad are protected and that their rights can be enforced through an efficient and effective dispute settlement mechanism. This is in line with the communication "Towards a comprehensive European international investment policy"
of 7 July 2010 and the basic position adopted by the Council and the European Parliament. Importantly, CETA incorporates the investment court system which meets the expectations of stakeholders for a fairer, more transparent and institutionalised system for the settlement of investment disputes. This new system will replace the 8 existing bilateral investment agreements between EU Member States and Canada, which follow the traditional ISDS mechanism found in most other investment agreements.

The expropriation provision provides a basic guarantee against uncompensated expropriations and does not give Canadian investors more substantive rights than those enjoyed by EU investors under domestic law. CETA also contains a detailed annex that clarifies the concept of expropriation. Indirect expropriation can only occur when the investor is substantially deprived of the fundamental attributes of property. Legitimate public policy measures taken to protect health, safety or the environment will not constitute indirect expropriation. The investment dispute settlement mechanism will therefore not jeopardise the adoption or application of EU legislation in so far as this legislation aims at pursuing legitimate public policy objectives and respects fundamental principles of law and good governance (e.g. non-discrimination and transparency).

Concerning the recommendation to emphasise domestic dispute settlement procedures even if CETA provides for ISDS, both Canada and the EU Member States have well-functioning court systems – as the report itself notes – and both partners encourage resolution of disputes through domestic courts. Investors are well aware of the possibilities and advantages of the dispute settlement options available to them and will face clear choices giving them further guidance so that they can make an informed decision on which alternative is the most suitable for their purposes. In fact, CETA encourages investors to first seek resolution of their problem at national level, as the decision to submit a claim in front of the Investment Court System precludes them from submitting a claim in front of a domestic court in the future. In that context, the Commission services have also taken note of the consultants’ recommendation to emphasise domestic dispute settlement and to create a dispute settlement monitoring body/forum. CETA provides a mechanism that would allow both Parties to monitor and correct the functioning of the investment protection chapter in the future. The Joint Interpretative Instrument records the EU and Canada’s commitment to monitoring the operation of all the investment rules, to addressing in a timely manner any shortcomings that may emerge and to exploring ways in which to continually improve their operation over time.
With regard to the recommendation to exclude essential and basic public services from investment commitments, the Commission services note that the EU has always followed a consistent pattern in all its trade agreements over the last 20 years since the creation of the General Agreement on Trade in Services (GATS) in 1995: for publicly funded services (i.e. health, social, education, water supply, etc.) the EU either takes no commitments at all or takes a full so-called “reservation”, both of which effectively dispense the EU and its Member States from any market access or non-discrimination obligations. During the negotiations each EU Member State has retained the right to determine whether or not to liberalise a specific public service depending upon its own individual evaluation of whether a specific public service may need to be protected and thus potentially excluded from liberalisation. CETA will consequently not restrict the way in which public services are provided nor does it contain obligations to privatise any of these sectors. Future governments will have the right to bring back to the public sector a service that is currently outsourced. The Joint Interpretative Instrument explicitly confirms these points.

5.7 Overarching issues

a) Consultants’ policy recommendation:

- Include a Trade and Sustainable Development Chapter in CETA and within that chapter establish an effective monitoring body. Include a section on trade and labour, committing to ILO Core Labour Standards and Decent Work Agenda.
- Ensure CETA allows usage of domestic policy tools to limit alcohol abuse.
- Create a clean energy partnership initiated between the EU and Canada, which could be modelled off of existing programs.

b) Commission services’ reaction:

The Commission services agree with the recommendation of the consultants. An ambitious trade and sustainable development chapter has been included in CETA with a dedicated and binding dispute settlement mechanism for the enforcement of these provisions. This mechanism is time-bound, inclusive and transparent – involving governments, external experts, civil society and other independent bodies such as the ILO. The mechanism included in CETA reflects the current position of the EU on this matter. In CETA, Canada has taken commitments with regards to the ILO’s core labour standards, which it has never done before. It has accepted obligations with regard to
the ratification and effective implementation of the Conventions themselves, in line with our level of ambition. On the environmental side, CETA commits both sides to effectively implement all ratified Multilateral Environmental Agreements, as well as dedicated provisions on the conservation and sustainable management of natural resources such as forestry and fisheries.

For both labour and environmental matters, CETA prevents the risk of a race to the bottom, by prohibiting derogations or lack of enforcement of domestic laws as a way to unduly encourage trade and investment. Furthermore, CETA fosters trade and investment practices favouring sustainable development, such as Corporate Social Responsibility, as well as transparency, for instance through a commitment to review the sustainability impacts of the agreement.

In addition, we have also reached agreement on dedicated structures for the involvement of civil society, as well as on an effective enforcement mechanism, based on transparency and detailed procedures for the involvement of independent experts.

The Commission services affirm that the use of domestic policy tools to limit alcohol abuse is not prohibited by CETA, provided that these tools are non-discriminatory and proportionate.

A clean energy partnership is not part of the scope of a trade agreement, but the recommendation has been passed on to the responsible Commission services.

6. Conclusions

The Commission services have noted the findings and recommendations of the trade SIA report and took several of them into consideration during the negotiations with Canada. As a comprehensive trade agreement, CETA includes a broad range of sectors within its scope and the SIA has highlighted the interconnected nature of the economic, social and environmental impacts the agreement might have. However, a number of issues depend on other external (economic) factors that an ex-ante assessment cannot fully predict. For that, the Commission services will carry out an ex-post evaluation some years after the conclusion of the negotiations in order to gauge the implementation as well as the long-term effects.