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Canadian
Services
Coalition

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A Submission to the Department of Foreign Affairs and International Trade Canada's Consultations on Possible Comprehensive Economic Agreement Negotiations with the European Union

We welcome the opportunity to respond to the Canada Gazette notice of December 20, 2008 for the Government of Canada's consultations on possible comprehensive economic agreement negotiations with the European Union.

The Canadian Chamber of Commerce, representing 175,000 members from coast to coast to coast, is pleased with the federal government's commitment to enhance our economic partnership with the European Union. The EU is our second most important trade and investment partner. A closer economic partnership is projected to generate \$40 billion in annual trade and investment gains. This means more market access opportunities for Canadian goods and services producers and more jobs for Canadians.

To achieve these results the Canadian and EU governments should pursue a comprehensive agreement encompassing the following areas:

- Tariff barriers;
- Non-tariff barriers;
- Trade in services;
- Investment;
- Taxation;
- Trade facilitation;
- Government procurement;
- Dispute settlement process;
- Intellectual property protection.

After consulting with our members, we've focused this submission on a few sectors, with export interest to the European Union, that are experiencing tariff or non-tariff barriers to trade and investment.

Agriculture

The agricultural industry, specifically the meat sector, deals with a number of tariff and non-tariff barriers to trade into the European Union. And despite Canada's sophisticated safety and regulatory standards, our agri-food producers are subject to onerous requirements in the EU. In fact, our agri-food trade deficit with the European Union was \$1.4 billion in 2007.

Our negotiations with the European Union give us the chance to remove the trade barriers that are holding back our agri-food sector from reaching their market access potential. Examples of barriers and onerous regulations include:

- Tariff rate quotas on pork;
- Export subsidies to pork;
- The European Union's *Third Country Meat Directive*, which places highly prescriptive requirements for plant standards and meat hygiene;
- The ban on hormones in livestock production;
- Restrictions on market access for genetically-modified organisms (GMOs);
- The European Union's *Common Agriculture Policy* that discriminates against Canadian producers;
- Restrictive BSE-related measures applied to livestock, meat, and feed trade;
- The *Maximum Residue Limits* for various compounds; and
- A lack of mutual recognition of many food safety standards and inspection processes.

Further, the European Union hasn't even met the minimum market access commitments for certain agriculture products that was required by the *WTO Agreement on Agriculture*.

We recommend that the federal government work with the European Union to secure more market access opportunities for Canadian agri-food producers. To achieve this, we must comprehensively address both tariff and non-tariff barriers to trade.

Chemicals

The Canadian chemicals industry has a lot to gain from an agreement with the European Union. In 2008, total exports were \$19 billion with potential to increase sales with a competitive international trade environment. While tariff levels are low, there is concern with the European Union's Registration, Evaluation, Authorization, and Restriction of Chemical substances (REACH) system.

REACH, designed to enhanced safety standards, requires all chemicals produced or imported into the European Union, in volumes over one ton per year, to be registered in a central database while imposing additional testing and marketing procedures. It could impact approximately 30,000 chemicals in addition to the natural resources sector and any industrial sector that uses chemicals in producing their products. This uncertainty is a major concern for Canadian business.

Canada and the European Union share common goals when it comes to the regulation of Chemicals. We recommend that the federal government work with the European

Union to find a way to cooperate by achieving the desired goals while avoiding duplicative procedures and potential barriers to trade. The classification of chemicals and products must be based on scientific rationale and evidence.

For example, substances that have been considered by the Canadian Chemicals Management Program as not posing a risk, meaning those categorized and determined no assessment is required, or assessed and determined to not pose a health or environmental risk (i.e. not toxic under the *Canadian Environmental Protection Act*) should be exempt from the REACH registration requirements when exported from Canada either directly into the EU or in mixtures or articles.

We must keep in mind that the Canadian chemicals industry is part of an integrated North American market. Regulatory cooperation with the European Union should not contradict, but rather support, this continental environment.

The Auto Sector

Currently there are very few Canadian automobile exports to the European Union while imports from EU manufacturers totalled five percent of the Canadian market in 2007. Vehicle tariffs in the EU are approximately 10% and in Canada they are 6.1%. Given that the automotive regulatory framework in Europe is quite different from the regulatory framework in North America, any trade discussion should include serious consideration of regulatory issues.

It is important that any agreement take into account that Canada's auto industry is part of an integrated North American system. Any regulatory change under consideration as part of Canada-EU trade discussions must consider the need to maintain regulatory consistency and harmonization with dominant North American environmental and safety standards.

The Wine Sector

Canadian winemakers can increase their presence in the EU through an enhanced economic agreement. In the first 10 months of 2008, Canada exported \$1.3 billion of wine to the European Union, 80 percent of which was Canadian Icewine. In contrast, EU wine producers are significant players in our market, representing approximately 50 percent of total wine sales in Canada.

Canada and the European Union have a long history of cooperation in the wine sector. For example, the Canada-EU *Wine and Spirits Agreement* provides a forum for addressing wine-related policy matters such as the process for phasing-out domestic use of certain geographical indicators.

It is important that the outcome of the upcoming negotiations has a positive impact on our wine sector. We must be ready to address any EU labelling regulation that may become a barrier to trade such as the requirement to list all allergens in multiple languages. Secondly, we must make sure that we can compete on a level playing-field with the European Union. Currently, certain additives and processing aids are not approved for use by Canadian winemakers but are used in EU wines that are sold in

Canada. Let's accept the use of those that have already been scientifically reviewed and approved by international standards, giving our winemakers access to additional winemaking tools. Lastly, EU wine subsidies are in the range of \$2 billion annually. While WTO legal, the bottom line is that these measures provide a significant subsidy and competitive advantage to European winemakers, including in the Canadian market where EU products already enjoy a large market presence.

Information and Communications Technology Products

A major concern for Canadian companies is recent actions by the European Union that eliminate duty free access for certain information and communications technology (ICT) products, such as set-top boxes, LCD monitors, multifunction printers, and mobile phones with advanced functionality. This unilateral move contravenes the WTO's Information Technology Agreement (ITA) that binds and eliminates customs duties on ICT products. The WTO is looking into the legality of the EU eliminating duty free access for several of the disputed products, while the issue of the reclassification of mobile phones is being discussed within the European Commission. Our negotiators should be mindful of this and any partnership with the European Union should decrease tariffs, securing market access for producers of ICT products.

Another barrier in some EU countries, specifically France, Hungary, and Poland, is import encryption licencing requirements for technology shipments, including encrypted software. To comply with these rules, companies have to apply for import permits, complicating the import process and increasing administrative costs. On occasion these requirements are for national security purposes but other times they are applied to achieve protectionist goals. Encryption is common in a number of ICT products and the additional requirements slow down the movement of goods and increase costs. Our negotiators should be aware of these requirements and seek measures that ensure they do not act as a protectionist barrier.

The Services Sector

The Canadian services sector represents two-thirds of our economy. Given its importance, the Canadian Chamber established the Canadian Services Coalition (CSC) to provide a strong and cohesive voice to the sector. The main objectives of the CSC are to liberalize services markets throughout the world and to remove trade and investment barriers in the services sector to increase the opportunities available to Canadian companies.

The European Union is Canada's second largest destination for services exports. Just like the trade in goods and agriculture products, we have a strong economic interest to reduce barriers to the movement of services. Any deal must include services market access gains in the four modes of services trade:

- Services supplied from one country to another;
- Consumers or firms using a service in another country;
- A foreign company setting up operations in another country to supply its services (foreign investment); and

- Individuals travelling from their own country to supply services in another nation (labour mobility)

Specifically, we should get commitments at or equivalent to, the two-digit level for computer and related services in addition to full commitments in management consulting services and services related to management consulting.

There is a global market for skilled labour and Canadian businesses must be able to access it while giving our talent increased access to foreign markets. Professional services such as legal services and accounting services are not licenced at the EU level but rather at the member-state level, creating a patchwork of regulations. As part of these negotiations, we should look to gain more mutual recognition of professional credentials between Canada and the European Union. This requires formal consultations between both public- and private-sector regulatory bodies. It's important to note that, like the European Union with its patchwork of regulatory bodies in member states, we have interprovincial barriers to trade, investment, and labour mobility in Canada. The Canadian Chamber has been a vocal advocate for eliminating these internal barriers.

In financial services, we would welcome mutual recognition of stock exchange standards and the qualifications of self-regulatory organizations like investment dealers. One impediment to progress here is Canada's fragmented domestic market. A single Canadian securities regulator would be a positive development for the negotiation of mutual recognition with the European Union and with other countries. Another opportunity is in financial information services, a sector where Canadian companies are leading suppliers. As part of a Canada-EU agreement we should push for the liberalization of the movement of financial information. There has been a trend in recent bilateral agreements to include provisions for eliminating restrictions on financial information flows so that the data can be processed outside the home country. These provisions were included in the U.S.-Korea free trade agreement and the European Union is pursuing this in its negotiations with Korea. It is a standard that should be included in Canada's agreement, enhancing market access opportunities for Canadian suppliers.

Canada should be mindful of the work being done by the EU and the United States in the Transatlantic Economic Council (TEC). Through the TEC, the EU and the United States have agreed to tackle a number of issues of common interest. For example, both countries agreed to form an insurance sector task-force with a commitment to create 'a truly level playing field for insurance companies operating in each other's jurisdictions'. The United States and the European Union appear committed to establishing common standards or equivalencies within certain areas of the financial sector. In the EU market, efforts are underway to ensure that the new *Solvency II* regulations governing financial services providers in the European Union allow for equal treatment between EU-based companies and U.S. companies.

The TEC is a model for achieving gains in regulation cooperation between the European Union and the United States. In the Canada-EU negotiations we should strive to ensure that greater regulatory cooperation is a key component of any economic agreement.

Foreign Investment

Foreign investment provisions should also be included in a future agreement with the EU. In the European Union there is uncertainty concerning the scope of its legal capacity to enter into investment treaties alongside its individual member states. As part of the negotiations, we should ensure that the European Commission is able to secure the necessary member-state support for making commitments to further investment liberalization.

Taxation

Taxation regulations also play a role in investment decisions. As part of the negotiations we should eliminate double taxation provisions to allow capital to flow freely between Canada and the European Union. We should reduce or eliminate withholding taxes on dividends, interest, and royalties. Personal tax exemptions on unincorporated business income received by non-residents and a common method of taxing foreign source income would also be welcome.

Trade Facilitation

Canada and the European Union have developed voluntary trusted shipper programs. The EU Authorized Economic Operator (AEO) programs and Canada's Partners in Protection (PIP) allow companies to enter into a partnership with their respective border agencies; have their supply chains validated; and if approved as low-risk, granted expedited movement across the border. Despite similar goals, they are separate programs, with duplicative costs and processes. As part of the negotiations, Canada and the European Union should work towards mutually recognizing each other's trusted shipper programs. Besides decreasing participation costs and administrative burdens, further coordination between our border agencies, will secure supply chains operating between Canada and the European Union.

Government Procurement

A number of Canadian companies are global leaders in the public procurement market such as developing infrastructure, transportation, energy, and utilities systems. The public procurement market, representing 15% to 20% of GDP in OECD countries and 30% in non-OECD countries, holds significant opportunities for Canadian businesses. However, barriers exist in Canada and the European Union for foreign companies seeking to compete for public projects. This is the case at the EU, the EU member state, the Canadian federal government, and the provincial/territorial government levels. As part of the negotiations, we need to make sure that all these levels of government are consulted and supportive of the future agreement, and that public procurement policies are applied in a transparent and non-discriminatory manner.

Dispute Resolution Mechanism

As part of an enhanced economic partnership with the European Union, we should implement a dispute settlement mechanism. It gives certainty to businesses that both countries will be compliant to the agreed rules and regulations and that local regulations will not overrule the bilateral agreements.

Intellectual Property Rights

When intellectual property rights (IPR) are properly applied, they are a key pillar of any competitive economy. The Canadian Chamber of Commerce strongly supports increased protection of IPR and in 2008 established the Canadian Intellectual Property Council (CIPC). The Canadian Chamber and the CIPC also work with international organizations to gain better protections for IPR worldwide.

In 2007, two Canadian House of Commons Parliamentary Committees made concrete recommendations for improvements to Canada's IPR regime. Industry was very supportive of the increased profile these reports brought to IPR and fully endorsed the recommendations. Since that time progress has been made on one of the recommendations and Canada continues to be a participant in the negotiations for the Anti-Counterfeiting Trade Agreement. More work is needed. On February 3, 2009, the Canadian Chamber of Commerce and the CIPC launched a report entitled "A Time for Change: Toward a New Era for Intellectual Property Rights in Canada" that outlines Canada's IPR issues and provides achievable objectives.

The EU is also further enhancing their more robust IPR regime. The EU has entrenched the protection of IP rights in the Charter of Fundamental Rights and we also understand that the EU is working with its members states to develop IPR protection measures and improve its overall IPR system. Progress includes the 2006 issuance of a document on strengthening the criminal legal enforcement framework and the adoption of the Directive on the Enforcement of Intellectual and Industrial Property Rights requiring all members to apply effective and proportionate measures to deter counterfeiting and piracy. The EU is working with the U.S. on establishing strategies for IPR co-operation in customs and border controls, co-operation and joint action in 3rd countries, and improved co-ordination on enforcement (the *Action Strategy for the Enforcement of Intellectual Property Rights* - 2006 U.S.-EU Summit).

Unfortunately theft of intellectual property rights in Canada and the EU continues to be a major problem. The Canada-EU Comprehensive Economic Agreement provides an opportunity for both countries to continue to improve their IPR regimes. This includes setting high standards for IPR protection and enforcement that both jurisdictions must meet.

The IPR chapter should require both jurisdictions, including member states, to put in place:

- Legislative regimes for strong pro-IP policies that include criminal sanctions and the legal mandate for customs officials to robustly enforce IPR regimes
- Ensuring international IPR treaties are adopted e.g. WIPO treaties

- Institutional reform for better harmony on IPR issues among EU member states ideally with one regulatory body to assist with increased co-ordination among the various custom agencies.
- The requirement for robust and effective enforcement mechanisms for both physical and digital products. Both regimes must increase enforcement against IPR infractions. This will require additional dedicated resources for both law enforcement and customs agencies. This stronger enforcement mandate should include a mechanism to identify and target specific, high priority areas e.g. pirated goods at the Pacific Mall in Markham, ON, and copyright infringements in the Czech Republic, Hungary and Italy. Mechanism must be put in place to ensure on-line piracy, such as the Swedish website www.piratebay.org, one of the world's largest sites for the unauthorized distribution of copyrighted works such as music, video, software and games, is addressed.
- The establishment of further mechanisms for cooperation and coordination between our customs agencies.
- For data exclusivity, there should be a greater effort made to improve protection for undisclosed data submitted to obtain marketing approval for pharmaceutical products. Specifically, Hungary and Poland remain problematic for not fully implementing the current EU data protection regime.
- Mechanisms that require on-going intellectual property education programs.
- Cooperation on 3rd country enforcement is also needed. Canada-EU co-operation on ensuring strong patents are in place is crucial. This is especially true for "green" technology. Canadian and EU companies are working hard to find solutions to climate change challenges and continue to examine new methods of power generation and transportation. Countries that seek support for accessing these emerging technologies must be demonstrably able to ensure the protection of the IPR. For example, China, Brazil and India are currently before the UN seeking to transfer emerging green technologies.

On the defensive side Canada must ensure the EU's Doha position on mandatory patent disclosure is not adopted. Mandatory patent disclosure leads to uncertainty for knowledge-based industries.

Conclusion

Reaching an enhanced economic partnership with the European Union is an international policy priority of the Canadian Chamber. In addition to the rules of the final agreement, we should make sure that there is a vehicle driving further Canada-EU collaboration. Some areas of interest are climate change and research and development initiatives.

We are pleased that the federal government with the leadership of Louis Lévesque, Deputy Minister of International Trade, has established a business advisory group to consult with the private sector. We look forward to participating in the advisory group and work with the government to achieve a substantive agreement between Canada and European Union.