CETA & the WTO

World Trade Organization (WTO) Members reviewed the Comprehensive Economic and Trade Agreement (CETA) concluded between Canada and the European Union during a meeting of the Committee on Regional Trade Agreements held on June 19-20.

The aim of the gathering was to get a better understanding of how this bilateral agreement impacts third parties, and more broadly, the multilateral trading system.

Canada and the EU described CETA as their most ambitious and progressive free trade agreement (FTA) that sent a powerful signal to the world of their willingness to open markets and modernize trade rules. CETA sets new standards in trade in goods and services, investment and many other areas, the two said of the agreement which Canada considers as “a gold standard” for its future FTAs.

The EU and Canada formally concluded the CETA negotiations on September 26, 2014, roughly a year after an agreement in principle had been reached between the two parties on October 18, 2013. Since then, the two countries have been working on addressing EU Member-states’ concerns over the Investor-State Dispute Settlement (ISDS) provision in the investment chapter.

On February 29, 2016, Canada and the EU announced the end of the CETA’s legal scrubbing, and by the same token, an agreement on a new approach for protecting investments that will help set up a “permanent, transparent, and institutionalized dispute settlement tribunal” featuring an investment court system (ICS) to replace the existing ISDS.

The EU Commission came up with the ICS idea in November 2015. The proposal was initially presented to the U.S. in early 2016 in the context of the Transatlantic Trade and Investment Partnership (TTIP). However, the U.S. has yet to endorse the idea.

The EU had been pressing the U.S. to sign up for the ICS, with the aim to multilateralize it and combine the ICS into a single court under the WTO. The EU Commission strategy is to take a bilateral approach to reach that goal, having included the ICS concept in several of its FTAs, including the one signed with Vietnam (December 2015) as well as that with Canada. The EU hopes the U.S. will ultimately approve the concept, which would help speed up the process.

CETA, in the meantime, was signed by both sides on October 30, 2016 and has been provisionally implemented since September 21, 2017, except for provisions on investment protection and investment dispute settlement, which are still awaiting ratification from individual EU members.

At the Committee on Regional Trade Agreements meeting, Canada stressed that the CETA’s investment chapter protects investors through legally-binding provisions and an impartial mechanism for resolving investment disputes, a mechanism that WTO Members should look to multilateralize. In addition, the agreement will see 99% of tariff lines become duty free, once the accord is fully implemented, as well as the protection of more than 100 geographical indications (GIs), the EU added.

Members asked several questions on various aspects of the deal. Australia, New Zealand, Switzerland, and the U.S. expressed concerns with Canada’s decision to allocate 800,000 kg of its WTO cheese TRQ (tariff rate quota) to the EU. To a question asked by Australia on this, Canada replied that “the transfer of 800,000 kilograms of Canada's 20,411,866 kilograms WTO TRQ for cheese to the European Union was done to maintain the relative shares of supply due to EU Member State expansions in accordance with Article XIII:2.”

Switzerland said it was reserving the right to raise the changes in the Canadian cheese TRQ in other fora. New Zealand questioned the legal basis for this allocation, and how the changes were consistent with WTO rules, while the U.S. said it was pleased the WTO committee was providing a valuable transparency role.

Another interesting question came from the Chinese delegation, who asked how the United Kingdom's (UK) exit from the EU (known as BREXIT) would play into the agreement, and whether there is an understanding between the UK and Canada after BREXIT. If so, "what are the possible differences between the United Kingdom's schedule of manufacturing goods and that of the European Union? Is it possible to cause substantial impairment of the interests that Canada derives under the Agreement?" China asked.

The parties responded that the "UK will be in a position to negotiate, conclude and apply its own trade agreements with third countries" once its withdrawal from the EU is completed. However, "should there be a transition period as part of a withdrawal agreement to be agreed between the EU and the UK" – which is currently understood to last until December 31, 2020 – "CETA will apply to and in the UK. The UK will be bound by the obligations stemming from these trade agreements and in particular the UK will have to provide access to its market according to the conditions set out therein for the duration of the transition period," the parties added.

Geneva Watch is published by Dairy Farmers of Canada, Chicken Farmers of Canada, Egg Farmers of Canada, Turkey Farmers of Canada and Canadian Hatching Egg Producers to report on the various events occurring in Geneva, particularly on the WTO negotiations on agriculture.

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