



# CETA ISSUE IN FOCUS:

## Opening Opportunities for the Canadian Crop Sector

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*The report is in collaboration with CropLife.*



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## Executive Summary

Trade diversification requires Canada to look at all the different avenues available for exporters to tap into new markets. The Comprehensive Economic and Trade Agreement (CETA) with the European Union (EU) provides a key tool in our country's trade diversification efforts. Although the agreement is in force, there are still barriers restricting Canadian companies from reaching their full potential in the EU. This report presents recommendations on both the general operation of CETA's institutional structures to facilitate the reduction of non-tariff barriers, as well as specific priority areas for the crop sector in order to increase exports. Fixing our access problems into the EU is not only about taking advantage of CETA, it is also about meeting the ambitious targets set out in the government's Economic Strategy Table report. As the world's largest single market, the EU is a crucial part of the pathway to achieve those objectives.

## Overview of CETA

The Canada-European Union (EU) Comprehensive Economic and Trade Agreement (CETA) is the gold standard of Canada's trade diversification efforts. As the largest single market in the world, the EU is vital to Canadian exporters getting their products to new markets. Additionally, CETA offers a competitive advantage to Canadian companies over their American counterparts in this lucrative market.

The headline benefits on paper are substantial. Some of the key wins in the agriculture sector include duty phase-outs, such as durum wheat tariffs of up to 148€ (\$222 CAD) per tonne or rye and barley grain tariffs of up to 93€ (\$140 CAD) per tonne. However, these tariff reductions are only meaningful when Canadian companies are able to get their products to customers. Unfortunately for Canadian companies looking to increase a number of agriculture sector exports, problems remain in the European market when it comes to non-tariff barriers.

With provisional application of CETA having only occurred in September 2017, Canadian businesses are still working to realize the benefits. Merchandise exports to the EU increased 6.5% in 2018, indicating we are starting see Canadian companies take advantage of the agreement. The experience in the crop sector has been mixed in comparison to total Canadian exports to the EU.<sup>1</sup>



<sup>1</sup> "Trade Data Online," Government of Canada, accessed March 7, 2019, <https://www.ic.gc.ca/app/scr/tdst/tdo/crtr.html?time-Period=5%7CComplete+Years&reportType=TE&hSelectedCodes=%7C100110%7C100111%7C100119&searchType=BL&product-Type=HS6&currency=CDN&countryList=specific&runReport=true&grouped=GROUPED&toFromCountry=CDN&areaCodes=167&naArea=9999>

# Canadian Exports to the EU in Selected Products

Product	2017	2018	% Change	CETA Tariff Benefit
HS 1001 Wheat	\$395,771,975	\$378,183,144	-4.4%	Phase-out of up to seven years
HS 1002 Rye	\$984,495	\$837,383	-15%	
HS 1003 Barley	-	\$8,662	-	
HS 1004 Oats	\$31,084	\$184,474	493%	
HS 1005 Corn	\$194,685,510	\$382,894,652	96.7%	Duty-free access on day one
HS 1008 Other cereals	\$32,229,854	\$30,632,385	-5.0%	
HS 0810 Berries Fresh	\$2,301,647	\$1,539,128	-33.1%	
HS 0811 Berries Frozen	\$87,688,040	\$118,803,258	35.5%	
Exports in all HS Codes	\$41,584,000,000	\$44,276,000,000	6.5%	

A wide range of factors affects trade flows. However, governments play a direct role influencing market forces through the policy environment within which businesses operate. It is here, on non-tariff barriers, that improvements are needed to help Canadian companies increase access to the EU, particularly in the agriculture sector.

One of CETA's strengths is the institutional structures created by the agreement that force the Government of Canada and European Commission to the table to discuss irritants.

A number of these bodies have mandates that intersect with the agriculture sector. This includes

the Committee on Trade in Goods and its subsidiary bodies, the Committee on Agriculture and Committee on Wines and Spirits.<sup>2</sup> There is additionally the Joint Management Committee for Sanitary and Phytosanitary Measures<sup>3</sup> and the Dialogue on Biotech Market Access issues.<sup>4</sup> Cutting across sectors is also the Regulatory Cooperation Forum.<sup>5</sup> All of these bodies have begun their work.

With CETA into provisional application for over a year and the institutional structures beginning their work, now is the time to assess where we can undertake appropriate course corrections to enable Canadian businesses to be even better positioned to capitalize on the agreement.

<sup>2</sup> Canada-EU Comprehensive Economic and Trade Agreement – Article 26.2a

<sup>3</sup> Canada-EU Comprehensive Economic and Trade Agreement – Article 26.2d

<sup>4</sup> Canada-EU Comprehensive Economic and Trade Agreement – Article 25.2

<sup>5</sup> Canada-EU Comprehensive Economic and Trade Agreement – Article 21.6

# Setting the Conditions for Success

## Stakeholder Engagement

As noted above, one of CETA's strengths is institutionalizing regulatory cooperation between Canadian and European officials. The treaty-based mechanism should not be seen as the ultimate exercise of bureaucratic process, but rather as a convening tool for the key actors to deliver real results.

The challenges that businesses face evolve over time with new trade barriers unfortunately always emerging. The federal government rightly undertook a formal Canada Gazette consultation process with the business community in 2018 to seek priorities for the Regulatory Cooperation Forum (RCF). However, it is crucial that mechanisms exist which ensure an ongoing dialogue between government and industry, not just on the RCF, but all CETA institutional bodies that are covering regulatory issues in some form.

The federal government currently has a wide set of mechanisms to receive this input, such as through the Trade Commissioner Service, overseas diplomatic missions or stakeholder contact in Ottawa. However, businesses are not always sure where to raise their concerns and valuable business intelligence may get lost in inter-departmental or intra-departmental processes.

### Recommendation #1:

Hold annual stakeholder sessions on a sectoral basis to inform the work of the yearly cycle of CETA institutional meetings.

To ensure our government officials have relevant business intelligence, there should be an annual platform for Canadian businesses to engage with government officials involved in the breadth of CETA institutional bodies to provide a forum for feedback from the business community. The sessions would be intended to inform the yearly cycle of CETA institutional committee meetings and for stakeholders to hear from federal government representatives about the workplans for the year ahead.


Given the nature of industry sectors cutting across different CETA committees, annual stakeholder engagement should be done sectorally to ensure businesses have a coherent picture of the various discussions happening in their area.

## Transparency

Supplementing direct stakeholder engagement should be an avenue for Canadian businesses to have a snapshot of Canada's priorities for the CETA's institutional structures.


The formal mechanism for Canada-EU trade barriers to be discussed prior to CETA was the Trade and Investment Sub-Committee (TISC). While TISC provided a similarly valuable function in forcing Canadian and European officials to the table, the process was sometimes perceived to be a black box from the industry view. Therefore, the posting of meeting reports from CETA committees is a welcome development. However, to make information more readily available, a consolidated online dashboard would be valuable. This transparency is also more likely to engender stakeholder participation if they know they can track their issues.

One of the other challenges with TISC pertained to issues remaining on the agenda for years without seemingly any hope of resolution. This was understandably frustrating for stakeholders. While it obviously does take two willing parties to make a regulatory cooperation outcome occur, we also need to draw attention to where issues languish for no justifiable reason. A single online dashboard keeping an ongoing tally of Canada's asks across the CETA committee structures would shine a light on where the European Commission is unduly blocking outcomes that would aid Canadian businesses.



### Recommendation #2:

Create a single online dashboard that outlines Canada's asks in CETA's institutional structures and their status.





## Looking Long-term

Long-term success in enhancing the competitiveness of Canadian exports to Europe also requires looking at the bigger picture of regulatory cooperation. This means balancing our interests in both accessing the EU and U.S. markets. The latter has understandably been our traditional focus. However, Canada can play a transatlantic bridging role.

### Recommendation #3:

Grant the U.S. observer status in the RCF and reciprocate likewise with the EU into the Regulatory Cooperation Council (RCC).

The fundamental differences in the regulatory approaches between the U.S. and EU are well documented, and have been recently reinforced by the fraught process in the two parties trying to advance their bilateral trade discussions. Given Canada has trade agreements and a functional regulatory dialogue with both these massive players, we can leverage our position to be a bridge builder between Brussels and Washington.

By granting the Americans observer status in the RCF and the Europeans observer status at the RCC, transparency and trust can be increased between the three parties. This can also be a first step down the long path of obtaining greater regulatory coherence between all three parties in a way that will reduce the burden for Canadian exporters that want to access both markets.

We also need to look ahead and prepare for the next phase of Canada's commercial relationship with the United Kingdom (U.K.) as it departs the EU.

The U.K. is Canada's third-largest goods export market, and constitutes roughly 40% of our merchandise exports to the EU. Therefore, it is crucial that access to the British market is not disrupted as the U.K. sets out its independent trade policy. Canadian and British government officials have indicated a desire to replicate CETA, but it is also crucial to undertake bilateral discussions which lay the groundwork for resolving non-tariff barriers that unduly inhibit Canadian exports.

### Recommendation #4:

Replicate CETA's structures with the U.K. and begin discussions at the earliest possible time on non-tariff barriers facing Canadian exporters.



## Elevate Agricultural Trade

### Delivering Canada's Agriculture Potential

The last few years have seen a wide acknowledgement of the importance of agriculture exports to Canada's economic success. The federal government's Economic Strategy Table set an ambitious target of increasing exports from \$65 billion to \$85 billion over an eight-year period. However, the barriers faced in the agriculture sector are unique given the political sensitivities. Therefore, we need a bespoke approach to help our country's agri-food exporters.

This report outlines a number of specific areas, but for Canadian agriculture exports to reach their full potential in the EU, their issues need to receive elevated prominence. This could be achieved by making agricultural issues a standing agenda item at the Joint Committee and Regulatory Cooperation Forum to ensure that we are using all possible avenues to advance the specific concerns outlined in more detail below. Delivering these outcomes would be a massive boost for our agriculture sector by ensuring greater predictability for the EU market.



### Recommendation #5:

Elevate predictable agricultural trade issues to be a standing agenda item for the CETA Joint Committee and Regulatory Cooperation Forum.



# The Canada-EU Regulatory Cooperation Agenda Looking Ahead – Helping the Canadian Crop Sector

Canada and the EU have taken on an ambitious agenda in CETA's institutional bodies. However, as noted above, there is a gap that needs to be plugged for Canadian companies to take advantage of the opportunities in the crop sector. It is crucial that we re-double our efforts in this area to enhance market access opportunities for Canadian exporters. As friends and allies, we should not hesitate to raise the difficult issues.

## Durum Wheat and Country of Origin Labelling

In 2017, Italy introduced country of origin labelling (COOL) labelling for wheat products. The impact has been disastrous for Canadian exports of durum wheat, which plummeted over the last five years.<sup>6</sup>

Exports of Durum Wheat to Italy (HS 100110, 100111, 100119) (Thousands of C\$)				
2014	2015	2016	2017	2018
\$556,950	\$459,665	\$321,818	\$173,235	\$92,957

The federal government needs to make Italy's COOL regime a priority for discussion by pursuing multiple approaches to ensure the critical importance is understood by as many parts of the European Commission as possible. The measure has clearly been introduced for protectionist reasons. Then-Italian Agriculture Minister Maurizio Martina said this about the rules: "[w]e are putting Italy in the vanguard of Europe when it comes to labeling as a competitive tool for the Italian (agriculture) sector."<sup>7</sup> In other words, the measure is not about consumer interests, but rather protecting the domestic market. Additionally, the push to introduce COOL was buttressed in Italy through campaigners amplifying incorrect information about alleged glyphosate residue levels in Canadian exports.<sup>8</sup> This underscores that the COOL rules were not well founded.

Given the political climate in Europe – and Italy in particular – this will undoubtedly be a difficult discussion. However, it is vital to place a firm marker down to both resolve this issue and push back against protectionism. It is welcome that Canadian government officials raised the issue in the CETA Agriculture Committee, but the matter would also benefit from receiving prominence at the Regulatory Cooperation Forum.



### Recommendation #6:

Continue to press the durum wheat issue in the CETA agriculture committee and elevate it to the Regulatory Cooperation Forum.

6 "Trade Data Online," Government of Canada, accessed March 7, 2019, <https://www.ic.gc.ca/app/scr/tdst/tdo/crtr.html?time-Period=5%7CComplete+Years&reportType=TE&hSelectedCodes=%7C100110%7C100111%7C100119&searchType=BL&product-Type=HS6&currency=CDN&countryList=specific&runReport=true&grouped=GROUPED&toFromCountry=CDN&areaCodes=167&naArea=9999>

7 Nickel, Rod & Crispian, Balmer, "Italy demands origin labels for pasta and rice," Reuters, last modified July 20, 2017, accessed February 2, 2019, <https://www.reuters.com/article/us-italy-durum-canada/italy-demands-origin-labels-for-pasta-and-rice-idUSKBN1A52OF>

8 "Italy looking to implement COOL on durum wheat imports: AWC/Cereals Canada response," Alberta Wheat Commission, last modified May 25, 2017, accessed February 2, 2019, <http://www.albertawheat.com/media/blog-the-wheat-sheaf/italian-durum-cool>

## Maximum Residue Levels

Countries rightly impose import tolerances stipulating maximum residue limits (MRLs) to ensure that the application of crop protection products is done in a manner which is not harmful to consumers. However, the application of these rules, particularly by the EU, has created undue barriers to trade which constrain Canadian exports without providing any extra level of consumer safety.

### Recommendation #7:

Establish a Technical Working Group on Pesticides under CETA with a mandate to develop a pathway to enhance Pest Management Regulatory Agency and European Food Safety Authority collaboration, as well as lay the groundwork for resolving MRL misalignment, including by looking at increasing the frequency of joint reviews.

The EU currently imposes a default MRL of 0.01 ppm when a pesticide is not specifically mentioned in its approved products list.<sup>9</sup> Consequently, the EU has begun automatically revoking the import tolerances for any pesticide that meets its so-called hazard-based cut-off criteria, as well as for all pesticides not registered for use in the EU and replacing these with the default MRL. There are approximately 60 pesticides on the EU chopping block<sup>10</sup> with no risk assessment that considers levels of exposure. When MRLs for pesticides are lowered to the 0.01 ppm default, trade stops.

This creates barriers to Canadian exporters looking to tap into the European market. For example, Nova Scotia used to export apples to the EU but stopped doing so when the EU lowered the MRL for diphenylamine to the default of 0.01 ppm. Diphenylamine is a commonly used storage treatment for apples with an MRL of 5 ppm in Canada and 10 ppm in the U.S.<sup>11</sup>

Efforts have been made to work on developing greater global convergence of MRLs through Codex and the World Trade Organization. Canada's support on the margins of WTO MC11 for work towards greater MRL alignment is an example of our country's leadership on the issue.<sup>12</sup> However, progress has been slow due to the political sensitivities created by erroneous perceptions of MRLs being a measure of food safety. Notwithstanding the sensitivities – particularly as they exist in the EU – we should not shy away from defending evidence-based approaches to resolve this market access barrier.

Acknowledging the difficulties within the EU, the science needs to be depoliticized by facilitating direct interfaces between the regulators to build greater trust. This could be accomplished through the creation of a Technical Working Group created under CETA's institutional structures. Taking this route would bind regulators into having ongoing dialogues and make them accountable to Ministers through the CETA Joint Committee. The Working Group could be given a clear mandate to establish a pathway to undertaking joint reviews. The CETA umbrella already encompasses collaboration on other consumer safety matters through the conformity assessment protocol and the good manufacturing practices protocol for pharmaceuticals, so there is no sensible reason why we cannot be ambitious in the area of crop protection products.

9 "EU legislation on MRLs," European Commission, accessed February 3, 2019 [https://ec.europa.eu/food/plant/pesticides/max\\_residue\\_levels/eu\\_rules\\_en](https://ec.europa.eu/food/plant/pesticides/max_residue_levels/eu_rules_en)

10 "Estimation of Potentially Affected Agricultural Imports Due to Hazard-based Criteria in the EU Regulation of Plant Protection Products," Bryant Christie Inc, October 2017, accessed March 25, 2019 [https://www.ecpa.eu/reports\\_infographics/bryant-christie-report-estimation-affected-imports-through-hazard-criteria](https://www.ecpa.eu/reports_infographics/bryant-christie-report-estimation-affected-imports-through-hazard-criteria)

11 House of Commons Standing Committee on Agriculture and Agri-Food, "Non-Tariff Trade Barriers to the Sale of Agricultural Products in Relation to Free Trade Agreements," Parliament of Canada, last modified November, 2017, accessed February 3, 2019 <http://www.ourcommons.ca/Content/Committee/421/AGRI/Reports/RP9220754/agrip08/agrip08-e.pdf>

12 "Trade in Food and Agricultural Products Joint Statement," World Trade Organization, last modified December 12 2017, accessed February 3, 2019, [https://ustr.gov/sites/default/files/files/Press/Releases/WT\\_MIN\\_17\\_52%20-%20Joint%20Statement%20-%20Trade%20in%20Food%20and%20AG%20Products.pdf](https://ustr.gov/sites/default/files/files/Press/Releases/WT_MIN_17_52%20-%20Joint%20Statement%20-%20Trade%20in%20Food%20and%20AG%20Products.pdf)

## Biotechnology

Biotechnologies have long been a vexed issue in the Canada-EU trade relationship. This is evidenced by the Dialogue on Biotech Market Access Issues, which although under the CETA structures now, was originally created due to Canada, among other countries, winning a WTO dispute with the EU in the mid-2000s.<sup>13</sup> The EU regime in this area poses another barrier to businesses maximizing CETA's benefits.

Building greater trust between the Canadian and European systems is a key step to reducing the degree of asynchronous approvals, which unfairly constrain trade between Canada and the EU. In order to build trust, it is necessary to promote regulatory approaches in both jurisdictions that are evidence-based. This can partly be achieved by ensuring officials on both sides of the Atlantic are working from a similar basis. In the long-term, this may be the best tool deliver closer alignment on standards.

Developing a common safety assessment format would facilitate a more efficient assessment for products already authorized in one jurisdiction. Each of EFSA's final determinations have aligned with Canada's and a common safety assessment format would help to build greater transparency and trust between regulators. A Canada-EU approach could seek to build off the lessons learned thus far from the work between Canada, Australia and New Zealand in this area.<sup>14</sup>

These tools to facilitate the approvals process are vital for addressing real, rather than theoretical problems in the EU. The European Ombudsman reviewed the issue of delays to biotech approvals and said they were "not satisfied that the Commission has given any reasonable explanation for an average delay of 3.5 months in taking its decision [...]. Given that a further delay at this stage might have adverse consequences for the complainants [...] the Ombudsman finds that these delays by the Commission constituted maladministration."<sup>15</sup> We need to leverage CETA's structures to get the EU approvals down to a 24-month review.



### Recommendation #8:

The CETA Joint Committee should direct the lead officials on the Biotech Dialogue and Regulatory Cooperation Forum to increase the predictability and efficiency of the EU system in order to reduce asynchrony between Canada and the EU, and have a goal in both countries of gaining approvals within 24 months or less of submission.



13 "DS 292: European Communities – Measures Affecting the Approval and Marketing of Biotech Products," World Trade Organization, accessed February 3, 2019, [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds292\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds292_e.htm)

14 "Science Strategy Implementation Plan 2018-19," page 10, Food Standards Australia and New Zealand, accessed February 3, 2019: <http://www.foodstandards.gov.au/science/strategy/Documents/Science%20Strategy%20Implementation%20Plan.pdf>

15 "Decision of the European Ombudsman closing the inquiry into complaint 1582/2014/PHP on the European Commission's handling of authorisation applications for genetically modified food and feed," European Ombudsman, last modified January 15, 2016, accessed February 22, 2019: <https://www.ombudsman.europa.eu/en/decision/en/63025>

## Recommendation #9:

Use the Biotech Dialogue as a forum to exchange information on forward-looking issues pertaining to plant breeding innovations and responding to instances of low-level presences.

It is also crucial to build trust in the forward-looking agenda and take a proactive approach to address problems in the EU. Innovation in the crop sector is rapidly advancing, much like other sectors of the economy. Innovative approaches, such as gene editing are opening new frontiers and it is important to be proactively minimizing regulatory divergences before they become locked-in and more difficult to alter. Canada and the EU should be using the Biotech Dialogue to exchange information on how each jurisdiction will use their regulatory regimes to respond to these developments.

Canada has been a leader in global efforts to bring a risk-based approach to low-level presence responses, including through the creation of the Global Low Level Presence Initiative.<sup>16</sup> While it is encouraging that Canada raised this issue during the 2018 Biotech Dialogue, pressure needs to be maintained to ensure Canadian products are not shut out of the EU

given the potential for significant negative economic impact. For example, in 2009 after traces of Triffid flax were discovered, Canadian exports to Europe plummeted from a high of 400,000 tonnes a year down to less than 20,000 tonnes within two years simply due to a lack of an EU low level presence policy to manage issues like this where there are no safety concerns.<sup>17</sup> Therefore, it is crucial for both jurisdictions to be transparent and eventually work towards mutually agreeable risk-based measures that can provide an adequate response, but also not have deleterious effects on trade.

## Conclusion

The federal government has rightly recognized that CETA opens up substantial opportunities and is a gold standard trade agreement.<sup>18</sup> However, there is still work to do in order for Canadian exporters to realize the agreement's full potential. Tariff liberalization is only one ingredient for success.

The first year of CETA institutional committee meetings show that there is a wide-ranging

cross-sectoral agenda on the table. We need to aggressively work to tackle the non-tariff barriers that restrict Canadian market access, even if it means pushing on some difficult issues with our trading partners, particularly as it pertains to the agriculture sector. In the long term, this will pay dividends and ultimately enhance the competitiveness of our exporters.

16 "Low-level Presence," Agriculture and Agri-Food Canada, last modified July 2, 2017, accessed February 3, 2019, <http://www.agr.gc.ca/eng/industry-markets-and-trade/agri-food-trade-issues/technical-trade-issues-in-agriculture/low-level-presence/?id=1384370877312>

17 Kamchen, Richard, "Flax on the road to recovery in the post-Triffid world," Country Guide, last modified March 31, 2016, accessed February 3, 2019: <https://www.country-guide.ca/crops/flax-on-the-road-to-recovery-in-a-post-triffid-world/>

18 "Address by Minister Champagne at a Plenary Session on the Comprehensive Economic and Trade Agreement (CETA) Between Canada and the European Union," Global Affairs Canada, last modified, May 29, 2017, accessed February 3, 2019: [https://www.canada.ca/en/global-affairs/news/2017/05/address\\_by\\_ministerchampagneataplenarysessiononthecomprehensive.html](https://www.canada.ca/en/global-affairs/news/2017/05/address_by_ministerchampagneataplenarysessiononthecomprehensive.html)

# Recommendations

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