

**PRESENTATION TO THE CANADA-LATVIA CHAMBER OF
COMMERCE ON THE CANADA-EU COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT (CETA):
OPPORTUNITIES FOR SMES IN CANADA AND LATVIA**

BY PIERRE-OLIVIER SAVOIE

Savoie Arbitration

Outline

- 1) Introduction
- 2) CETA generally
- 3) CETA and SMEs
- 4) Tariff Reductions / Other trade barriers
- 5) Procurement Opportunities
- 6) Investment Protections
- 7) Conclusion: Two stories

Introduction

- 1) Experience in law firms and government
- 2) Experience in government: notably part of Canada's CETA negotiation team
- 3) Savoie Arbitration and the future

CETA generally

- 1) Signed in 2016
- 2) Provisionally applied since 2017
- 3) Provisional application excludes certain investment protections but includes others; excludes investor-state dispute settlement; excludes certain financial services protections
- 4) CETA is a mixed agreement from EU's perspective, requiring ratification by Member States
- 5) As at November 2019, 13 EU MS completed internal ratification procedures (Austria, Croatia, Czechia, Denmark, Estonia, Finland, Latvia, Lithuania, Malta, Portugal, Spain, Sweden, and the United Kingdom.)

CETA generally

- 6) Signal by a Member State that it will not ratify the agreement would likely mean the end of CETA; for now no such signals
- 7) EU-South Korea FTAs took over four years (July 2011 to October 2015) to ratify
- 8) Will CETA be good for the EU and Canada? In particular, is it good for SMEs?

CETA generally

- Benefits of CETA since its provisional application in 2017:
 - From 2017 to 2018: EU exports to Canada increased from EUR 37.7b to EUR 41.4b
 - 2018: 4.5% increase of total bilateral trade in comparison to 2017
 - Bilateral trade in goods increased 10.3% in 2018 in comparison to 2017

CETA and SMEs

- CETA has specific provisions on SMEs
- FTAs' effect on SME exports:
 - EU SMEs are on average responsible for 35% of total direct exports to the EU's FTA partners, as compared to 25% when it comes to exports to the rest of the world
 - Increase of 4% of exports of EU SMEs to FTA partners between 2014 and 2015 while for rest of the world exports remained constant or decreased

CETA and SMEs

- EU (and Canada) include provisions on SMEs more and more in their free trade agreements
- Nevertheless, a recent study found that less than 20% of SMEs responding expected that the conclusion of a new trade agreement would lead to an improved ability to develop new markets or the procurement of intermediate goods and services
 - May 2018 survey by German Association for Small and Medium-Sized Businesses (BVMW) and the Schöpflin Foundation

CETA and SMEs

- The OECD emphasises that limited firm resources and lack of requisite managerial knowledge about internationalisation remain among the most critical constraints on SMEs' expansion of activities in foreign markets
- Recent EU's CoR (Committee on Regions) and Eurochambers survey suggests chambers of commerce should provide more SMEs more information

CETA and SMEs

- CETA chapter on e-commerce:
 - Recognition of the importance of making it easier for smaller enterprises to take advantage of CETA's potential benefits
- CETA chapter on procurement:
 - Relevant CETA committee tasked with ensuring SME access to and information about relevant procurements

CETA and SMEs

- CETA joint committee on SMEs:
 - Has recommended enhancing visibility and awareness of tariff schedules, product-specific rules of origin
 - Bilateral contact points for SMEs
- Consistent with German survey (May 2018) which found that more than 75% of respondents agreed a free online tool to help SMEs calculate whether their products comply with rules of origin criteria in EU FTAs would be very helpful

CETA and SMEs

- Investor State Dispute Settlement (not provisionally in force)
 - Aims at reducing the financial burden for SMEs to initiate dispute settlement
 - Availability of mediation and negotiating periods may help SMEs
 - CJEU's Opinion 1/17 (30 April 2019) held there was an access to justice issue with respect to CETA for SMEs

Tariff Reductions

- **99%** of all applicable customs duties between the EU and Canada are eliminated through CETA
 - 91% of all agricultural tariff lines have been cut
- **470 millions euros** could be saved each year - according to estimates by the European Commission - thanks to tariff dismantling

Tariff Reductions

- **CETA** establishes a comprehensive geographical indications regime that affords better protection to EU producers of traditional food and drink products
- **Wines and spirits** were protected under the 2003 wines and spirits agreement on oenological practices and Gis
- Today alcoholic beverages make up 40% of EU agricultural exports to Canada
 - Potential issue of remaining non-tariff barriers

Tariff Reductions

- Preference utilisation rate under CETA stands at only 37% (2018) but has good potential for increase
- Under CETA preferential tariffs can be claimed retroactively for a period of up to three years
- One issue is complexity of Rules of Origin to benefit from tariff reductions

Tariff Reductions / Other trade barriers

- EU SMEs could potentially benefit from the removal of onerous listing procedures in Canada's provincially-run liquor boards
 - EC noted in 2018 that discriminatory practices still existed
- Anecdotal evidence suggests EU producers (notably from Spain and France; and Irish spirit producers) are benefiting from tariff liberalisation in the wine (alcohol) sector and of the end of Canada's regional monopolies on wine retailing

Procurement Opportunities

- Canada has committed to set up a **one-stop shop for procurement notices** (‘single access point’ site) by 2022
 - Inspired by the EU’s ‘Tenders Electronic Daily’ System
- Over CAD 100 billion in procurements accessible to EU companies on the basis of CETA
- Majority of procurement come from provinces

Investment Protection

- Certain important investment protections are provisionally applied (as for trade in services as well)
- Provisional application concerns only direct investment, an EU competence (and not indirect investment, a MS competence)

Investment Protection

- Provisions that apply provisionally to direct investment:
 - Market access
 - National Treatment
 - Most favoured nation treatment
 - Senior management / board of directors
 - Transfers
 - Ratchet mechanism
- Protections that do not apply (investor / investment treatment; compensation in the case of expropriation; ISDS)

Investment Protection

- Lists of non-conforming measures
 - Annex I: existing non-conforming measures
 - Annex II: future non-conforming measures
 - Canada and EU have made lists of non-conforming measures which have been disclosed
 - Examples
 - Ratchet mechanism explained
- Support from government in case of measures being problematic or in breach of the agreement

Conclusion: Two stories

- First story: winning a public procurement in Romania
- Second story: setting up a Canadian law firm (Savoie Laporte) in France

Conclusion: Two stories

- Romania public procurement for representing the state in investment treaty arbitrations (2019)
 - Informed the Canadian embassy in Bucharest that Savoie Arbitration was participating in the procurement with a Romanian partner (law firm)
 - Canadian embassy / trade commissioner service available if there were ever issues in respect of the procurement
 - Savoie Arbitration shortlisted with 5 other international law firms as one of government's preferred law firms for certain types of arbitrations

Conclusion: Two stories

- Savoie Arbitration to become Savoie Laporte, a transnational law firm with offices in Paris and Montreal
 - 2018: Paris Bar changed its rules to allow for the sharing of profits between French lawyers and non-EU lawyers
 - In touch with Trade and Economic Policy Counsellor at Canada's Mission to the EU in Brussels about compliance with CETA rules, including most-favoured nation treatment requiring same treatment for Canadian investors in Europe than for EU investors in Europe
 - Awaiting decision from Paris Bar Council

Thank you

Savoie Arbitration

15 bis rue de Marignan

75008 Paris

www.savoiearbitration.com

pierre-olivier@savoie.com