

Strengthening Canada-EU relations – negotiation of a deeper economic partnership

**Speech by Anthony Cary, British High Commissioner , at the Canadian International Council,
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- The EU-Canada Summit in Prague last week launched a very important negotiation for a comprehensive economic partnership.
- It is an exciting project. And it comes at a critical moment, when the world needs such signals of confidence. As Mr. Harper said in Prague: *“At a time when many countries are retreating into protectionism, Canada is showing the way. We are working to open new markets and positioning our country for the future.”* Not least, it makes eminently good sense for Canada to reduce its dependence on the US market. Canadian companies want easier access to the EU market. And we want to overcome barriers that EU companies face in the Canadian market.
- For both of us, openness to the global economy is a key factor underlying our prosperity: a powerful stimulus to competition, innovation and growth. The EU is the world’s largest exporter of goods and services, while one in five Canadian jobs is linked to trade.
- Before I summarise the scope of what is envisaged in this negotiation, I would like to make some contextual points about the nature of the EU, because this is so little understood (in the UK, too!)
- The EU is sometimes viewed, I think, as a sort of club of developed economies that have formed a free trade area. It is much more than that. Without attempting a full history lesson, let me summarise how the EU came about, and what it is and is not.
 - Centuries of unstable balance of power politics and two World Wars.
 - The post-war conception of a European Union.
 - Why not like the US....
 - Brilliant success (why), for all its faults and frustrations.
 - Tensions about what it is and what it should aspire to become. A delicate balance between the national and the supranational. No logical resting-place between the two.
 - Weak foreign policy (goes to the heart of what it means to be a nation: “Talk softly and carry a big carrot”). In this sphere we are more like a typical association of states, often unable to resolve internal policy differences: (a High Representative for the lowest common denominator).
 - But strong policy when it comes to trade and to the single internal market. Majority voting with no (practical) veto. Single negotiator externally. Enforceable law. The Member States have chosen to ‘pool sovereignty’ to a degree that Canadian Provinces have steadfastly resisted.
- This is not always comfortable, and Member States – not least in the UK – often find it hard to stomach. The effort to create a level playing-field has required the EU to enter what Douglas Hurd called “the nooks and crannies” of national life. In the UK, politicians can be

faulted for having tried to pretend that not much changed when we joined the Common Market: that Parliament remained sovereign.

- Not so. Supremacy of European law. Factortame case in the 1980s (when a UK Act of Parliament to prevent Spanish fishermen from quota-hopping was struck down by the European Court. This came as a shock to many people.
- The key point about trade and economic agreements is that the EU Commission is the sole negotiator, on the basis of a mandate granted by the Council of Ministers. And once an agreement is entered into, it is there to enforce its application, through the European Court of Justice if necessary.
- In Canada, previous efforts to negotiate far-reaching economic agreements with the EU have often foundered. At critical moments, as we got onto freedom of services, or the recognition of professional qualifications or public procurement rules, or so-called ‘geographic indications’, or investment rules, Canadian negotiators have had to call a halt because these were Provincial responsibilities.
- At their Summit in October last year, EU and Canadian leaders asked officials to “*define the scope of a deepened economic agreement and to establish the critical points for its successful conclusion, particularly the involvement of Canada’s provinces and territories...in areas under their competencies*”. This so-called Scoping Exercise has now taken place, and it was on the basis of its report that the negotiations were launched last week.
- The launch of negotiations is in itself a great achievement (and owes much to the persistence of M.Charest, who has doughtily championed the potential of a far-reaching EU-Canada economic agreement for some time).
- The Commission was able to secure a negotiating mandate from the Member States in record time. This is not always easy, because the MSs are always suspicious that some new Community competence is being smuggled in against their will. Once it has its mandate, the Commission is free to negotiate on that basis, informing Member States of progress – and referring back to them when the negotiation touches upon particularly sensitive products, or areas such as taxation, criminal law or intellectual property where the Community has limited competence.
- It is worth dwelling for a second on the distinction, here, with the Canadian position. In your case it was not, perhaps, so hard for the Government to launch the process of negotiation. The Provinces did not have to scrutinise every dot and comma in the mandate, because they have given nothing away up front. Their hands are not tied. Unlike the EU MSs, they will be consulted, and their agreement sought to every concession, throughout the negotiation.
- So. What is in prospect? The Scoping Study started out by noting that:

- Bilateral trade in goods and services between Canada & the EU totalled C\$109bn in 2007. In goods, the EU is Canada's 2nd most important trading partner, while Canada is the EU's 11th.
- The investment relationship is even stronger: the EU is Canada's 2nd most important investment partner and Canada the EU's 4th.
- The Study estimated that if we could fully liberalise on each side, total EU exports to Canada might go up by 24.3% or €17 billion, while Canadian bilateral exports to the EU might go up by 20.6% or €8.6 billion.

On this basis, it is proposed that the negotiation should cover:

- * Tariff elimination, with no tariff lines should be excluded a priori. Between a quarter and a third of the overall benefits are expected to be derived from this effort.
- * Provisions on rules of origin that are as clear and simple as possible, with the least room for administrative discretion.
- * Measures to reduce distortion of competition and barriers to trade and investment caused by agriculture export subsidies and state trading enterprises.
- * Ambitious disciplines related to emergency action and trade remedies in order to reduce non-tariff barriers to trade.
- * A mechanism to address issues not covered by the existing Canada-EU Veterinary Agreement in the sanitary and phytosanitary field.
- * Provisions on technical barriers to trade including transparency, international standards, technical regulations and conformity assessment.
- * A chapter on trade facilitation, to improve efficiency, transparency, co-operation and consultation – esp for SMEs.
- * Greater Customs Co-operation allowing for the effective and transparent administration of rules of origin, in particular – and avoiding duplication with progress already made.
- * Liberalisation of trade in services, with wide sectoral coverage, based on non-discrimination and full market access. It should apply to measures taken by all levels of government, as well as non-governmental bodies, in the exercise of powers delegated by any level of government. No mode of supply or services sector should be excluded *a priori*.
- * Provisions to facilitate mutual recognition of professional qualifications.

- * Greater bilateral investment flows, esp. by providing for non-discriminatory treatment, and by improving transparency. Again, this will require substantive and procedural obligations at both the central and sub-central government levels.
- * Access to public procurement, again at both central and sub-central government levels, and covering all sectors – with treatment no less favourable than that accorded to locally-established suppliers. In addition, our business communities need to be furnished with easily accessible information on public procurement.
- * Enhanced regulatory co-operation, to avoid trade barriers resulting from divergent regulatory approaches. The existing framework is voluntary, and far too limited in scope (focussing only on co-operation in the goods sector and only at central government level).
- * Improvement on WTO TRIPS (Trade-related Aspects of Intellectual Property Rights) levels of protection – which are minima – wherever there might be a need for increased protection and/or enforcement (notably in relation to geographical indications).
- * Facilitation of the legitimate temporary movement of persons for business and trade purposes.
- * A broadening of the scope of exchange of information and co-operation between competition authorities to include state aid as well as disciplines for designated monopolies and state/public enterprises to ensure that they do not distort competition or create barriers to trade and investment.
- * A binding state-to-state dispute resolution mechanism as well as appropriate mediation mechanisms, at all levels of Government.
- * Above all, both sides have agreed that **nothing should be excluded *a priori***. The maximum degree of benefit to both sides will be achieved through the maximum degree of liberalisation.
- * To cap it all, and to maintain pressure for an early outcome, it was agreed at the Summit that the aim should be to conclude all this **within two years**.

- As I say, it is an exciting project which comes at a critical time.
- But we need to be clear-eyed about what will be involved. The Canadian Provinces need to sign up to the deal. M.Charest – who has been a strong champion of this agreement – has already announced that Pierre-Marc Johnson will represent Quebec in the talks. He will not be a formal partner, as the envisaged partnership is between the EU and Canada. But he will often be at the negotiating table, I suspect. Canada’s negotiating team will need M.Johnson’s agreement – and eventually the consent of the Quebec Assembly – to every concession that may bear on Quebec’s competences. No doubt other Provinces will appoint their own representatives for the same purpose.

- On the Canadian side the Provinces have made repeated assurances that they want this agreement, and I have no doubt of their sincerity. But it will be hard. Jason Langrish, Executive Director of the Canada Europe Round Table, which has been pushing for the Canada-EU deal commented that: *"The big challenge of course is going to be that there will be winners and losers. And politically, will there be the overall will to say 'Hey, we're going to have to take some privilege away from you so that we can get greater overall privilege for the Canadian economy'?"*
- Let me give one example of how – even when members of a Federation or Union want an agreement, it can be politically difficult. [Motorbikes in 1991. European industry being driven into the ground by Japanese exports, asked Commission to create EU-wide type approval. This required draft 27 Directives. At once there were Hell's Angels demonstrations. Politicians said they would fight the Commission tooth and nail to protect eg high-powered superbikes – but they had to give in].
- Now if we had not had supranational mechanisms to force the hand of the Member States, I have no doubt that the project would have foundered. British Ministers were able to face down protesters by saying. *"We can't do anything about it. The mad European Commission is forcing our hand. We gave up our sovereignty in this area in the European treaties...Isn't Europe awful?"* But in Canada, Provincial politicians will not find it so easy to hide.
 - * If, for example, supply management arrangements relating to cheese etc came into question, Ministers would not be able to say to those losing out that: *"We are sorry that you will lose the quota arrangements from which you have benefited so long – but what can we do? Our hands are tied."*
 - * If, as part of an overall deal, Canadian producers of certain goods (such as parmesan cheese or Dijon mustard) were told that they would no longer be able to use those names, the Provincial Governments would have to take direct responsibility for the concession. [Whereas in Britain, when we lost the right to use the name 'British Sherry' for the horrible stuff we produced out of imported grape concentrate, we could, again, blame the wicked, power-crazy European Commission. We had a battle royal, over many years, to preserve the right to use the word 'chocolate' in connection with our dairy milk variety. We were within an ace of having to call it 'vegetate' or somesuch, because several partners considered that it did not contain enough cocoa fat to warrant the name of chocolate! Luckily we were just able to frustrate a majority against us, and a compromise was secured.]
 - * And the same goes for many other areas of policy, from public procurement rules to phyto-sanitary ones, to recognition of professional qualifications and freedom of services.
- Furthermore, the EU will not be content with vague assurances about enforcement and dispute resolution, with the danger that when the time comes the Canadian Federal authorities simply put up their hands and say: *"We can't help. This is a Provincial competence..."* The Commission is required to obtain substantial, explicit and binding

commitments in all those areas under negotiation that fall wholly or in part under the jurisdiction of Canadian Provinces and territories.

- So the Provincial representatives to the negotiations will have their work cut out. M.Charest commented last week that it was a breakthrough that the Provinces would be so directly involved and consulted. In a sense that is true. But in another sense, it is a demonstration of why the negotiation will be so hard from a Canadian standpoint. Because every Province will need to agree every concession in the negotiation – whereas the European Commission will be negotiating on the basis of an agreed mandate, without the need to consult Member States at every step or to secure their approval of every concession (though it will refer back often to seek advice and to take the political temperature).
- I wish the negotiations very well indeed. There are huge gains to be made, in the EU as in Canada, if we can steer the negotiations to harbour. It is crucial, on both sides, that the business community should keep up pressure on negotiators, insisting that they maintain a high level of ambition, and reminding them of the prize to be won.
- I sense impatience within Canada itself, at many levels, to break down inter-Provincial barriers that reduce prosperity. Several Provinces, such as BC and Alberta, have made good progress on a bilateral basis. But it can be politically difficult to overcome obstacles to free movement of goods and services when the costs tend to fall upon particular entrenched interests, while the benefits, though much larger, are also more evenly spread, and therefore have fewer passionate champions. In such circumstances it can be helpful to have some external pressure, and perhaps the EU can help in that respect.
- So, again, I wish the coming negotiations every possible success. We all have much to gain. Our masters have asked for an outcome within 2 years. That is a daunting target. To work!