

# The Canada-EU Trade Agreement Leak

Posted: 11/27/2012 9:55 am

Huffington Post

As International Trade Minister Ed Fast returns from negotiations in Europe that [failed to secure](#) a deal on the Canada-EU Trade Agreement, newly leaked documents to the CAQ and [posted by LaPresse](#) provide a detailed look at the remaining outstanding issues with details on the Canadian and European positions. The documents (1, 2, 3, 4) make it clear that the EU recognizes the deal is unbalanced as there are far more demands for Canadian changes than European ones. The EU retains the hope that Canada will cave on the EU demands since "the EU market to which it gains preferential access is much larger than its own."

This ranks as perhaps the most important CETA leak to date, since it clearly identifies the key remaining issues, the European demands, and the massive changes that would be required for Canada to comply with the treaty. Some of the changes demanded by Europe include patent reform that could add billions to Canadian health care costs, the removal of foreign ownership restrictions on telecommunications and book publishing, the opening of public procurement for the energy and public transport sectors, eliminating Investment Canada Act review for European investments, new restrictions on the sale of a myriad of products such as feta and parmesan cheese, changes to agricultural protections (ie. supply management), and the adoption of European standards on passenger cars. This would require dramatic changes across the Canadian economy, all for what even the Europeans acknowledge are limited gains for Canada.

Given what is at stake, there needs to be an open debate and consultation before an agreement is reached (which is no longer a certainty) and Canada should be considering whether a scaled down version of CETA - one that focuses primarily on a reduction of tariffs for trade in goods - is a better model. A closer look at the some of the remaining issues is posted below.

## 1. Intellectual Property Provisions

### a. Geographical Indications

The EU is seeking stronger protections for geographical indications, which

are signs used on goods - frequently food, wine or spirits - that have a specific geographical origin and are said to possess qualities, reputation or characteristics that are essentially attributable to that place of origin. The parties have identified dozens of products that are at issue including foie gras, munster cheese, bratwurst, feta cheese, asiago cheese, gorgonzola cheese, parmesan cheese, and prosciutto. The EU is demanding that some of the Canadian versions of these products be phased out within 10 - 15 years. The EU also wants enhanced border measures blocking entry of non-European GI products.

## b. Copyright

There are no outstanding copyright issues. The EU dropped ACTA provisions from the copyright chapter after the European Parliament rejected the agreement in July. The EU acknowledges that Canada had no real demands for copyright or intellectual property reforms, rightly characterizing the minor requests (such as anti-camcording rules) as "mere bargaining chips."

## c. Patents

The EU is making three demands in patent area, all involving pharmaceutical patents (hence the intense lobbying from RxD, the lead pharma lobby group). They are patent term restoration, extension of the period of data exclusivity (Canada meets the WTO standard but the EU wants a significant extension), and a right of appeal under Canada's marketing authorization system. Studies indicate these changes could add billions each year to Canadian health care costs. The EU believes Canada is willing to trade concessions on pharmaceutical patents for gains on agricultural market issues.

## 2. Investment Access and Protection

The EU is seeking significant changes to Canada's investment rules, acknowledging that while most of Canada's requests are consistent with existing EU rules, whereas the EU is seeking new market access from Canada. For example, while the EU is seeking liberalization in areas such as telecommunications (complete opening of the market), postal services, maritime transport, and air transport, it is only offering change in areas such as private education or research and development. The EU also wants European investors exempt from the Investment Canada Act reviews.

Investor protection is another major stumbling block, particularly since the EU is concerned that the Canadian agreement will establish a precedent for

a possible future deal with the United States. For example, Canada wants reduced investor protection in the financial services sector, which the EU says is unacceptable. Canada also wants the right to expropriate without compensation to pursue "legitimate" policy objectives, an approach the EU will not accept. Further, there are major disagreements over the structure and applicability of an investor-to-state dispute settlement mechanism.

### 3. Public Procurement

The issue of public procurement has been a controversial issue, with dozens of Canadian municipalities passing resolutions to opt-out of CETA. The EU will have none of it, stating that the minimum requirements including full access (including local content requirements) for public urban transport, significant improvements in energy procurement in Quebec, Ontario, and Newfoundland, and the elimination of provincial regional development clauses. Moreover, the EU wants ports and airports included within a "catch-all" clause.

### 4. Goods and Rules Origin

There are a wide range of disagreements over goods, ranging from the rule of origins for passenger cars (Canada is prepared to accept EU rules for all vehicles other than passenger cars), footwear, clothing, and many agricultural products. For example, the passenger car issue reflects the fact that Canadian cars are really North American cars, with significant value-add taking place in the United States. Ironically, two of the companies that are seeking greater European access now have sizable European ownership stakes (Fiat-Chrysler and Ford). Canada exports less than 10,000 cars per year to Europe at the moment and the EU hopes to establish a quota system for Canadian cars as a solution. Note that there are other auto issues, including European demands that Canada accept over 20 EU standards on cars.

### 5. Cultural Protection

Canada started with demands for a broad exclusion of culture and cultural services. The EU wants a more targeted approach including no protections for printing, publishing, and telecommunications. Canada has restrictions in these areas that the EU would like removed.

### 6. Labour Rights

Canada is seeking reduced labour rights as compared to the EU. The EU notes that this is difficult to accept since CETA would offer less labour

rights than its other free trade agreements. Moreover, there are differences between Canada and the EU on how to enforce labour rights, with Canada seeking monetary remedies for a breach of labour rights obligations, an approach the EU doesn't like.