



CETA, REGULATORY COOPERATION AND FOOD SAFETY

SUMMARY

European Union member state parliaments have the right and responsibility to ratify or cancel the EU's trade deal with Canada, in spite of its preemptive entering into force on 21 September 2017. However, from this day onward many CETA provisions, including those relevant to regulatory cooperation, will apply provisionally in the absence of unanimous endorsement of member state parliaments. In the interest of an informed decision, member state parliaments must urgently confront a series of critical questions regarding CETA, including its implications for European food and agriculture, EU law, and the precautionary principle.

CETA, in common with all trade agreements, will reduce tariffs in order to increase cross-border trade. However, CETA goes well beyond this traditional focus, and to an unprecedented degree seeks to influence the development of domestic policies in the EU and Canada, with the goal of reducing business costs and limiting regulation. Stronger EU food and agricultural policies are most at risk of weakening.

Agricultural and food standards are among those targeted by CETA's focus on eliminating so-called 'non-tariff barriers'. Food systems differ significantly between Canada and the European Union. Canada has weaker food safety standards than the EU, and a farm economy more heavily dependent on chemical inputs and genetically modified organisms (GMOs). These factors effectively prohibit increased Canadian exports of key products to the EU, creating a powerful economic incentive for Canada and its largely industrialised agricultural sector to weaken or eliminate EU food and agricultural policies that stand in their way.

More stringent EU rules include, for instance, stricter limitations on the production and sale of genetically modified (GM) crops and food products, mandatory labelling for food with GM ingredients, and for many products, identifying the country of origin (see also Briefing Paper 2). EU rules also restrict the use of growth hormones and antimicrobial chemical washes in meat production and processing, and include stronger animal welfare protections and restricting cloning. (See also Briefing Paper 3).

CETA incorporates a toolbox of deregulatory measures strongly advocated by transnational corporations. These include 1) requiring licensing regulations to be 'as simple as possible', 2) so-called 'regulatory cooperation' initiatives to synchronise regulations over time toward a single transatlantic standard, 3) special rules to promote trade in biotechnology, and 4) new risk assessment standards that will undermine the EU's more precautionary approach to regulation, especially in the application of the precautionary principle where scientific information is limited or not definitive.

Canada's prior experience in implementing the North American Free Trade Agreement (NAFTA) illustrates the threat to legislation. The high degree of integration within the US and Canadian agricultural markets spurred by NAFTA resulted from both lowering tariffs and harmonising food safety regulations.¹ The NAFTA experience suggests that deregulatory initiatives such as those in CETA, even if technically 'voluntary', lead to a harmonisation of standards towards the lowest common denominator in a process that lacks transparency and gives industry stakeholders preferred access.



Over two decades since NAFTA came into effect, the Canadian government has “gradually deregulated, under-regulated and moved toward industry self-reporting in order to ‘reduce the burden’ on business”.² It justified these actions by invoking a need for regulatory cooperation. The result has been a deterioration in food safety standards, reduced concern about the risks associated with toxic chemicals, and a greater willingness to allow pesticide residue contamination in foods.³

Canadian agribusiness strongly advocated for regulatory cooperation in CETA, and the industry is not waiting for CETA’s ratification to advance its deregulatory agenda. Canadian agribusiness is already objecting to the continued existence of stricter EU food safety standards, saying they are inconsistent with CETA and a problem that must be resolved. The Canadian meat producing, packing and processing industries have complained of ‘technical barriers’ that remain in place even after CETA’s signing that prevent export of their products to the EU.⁴

In parliamentary hearings, the Canadian Cattlemen’s Association conditioned its support of CETA with a demand for “a commitment from the government of Canada to develop and fully fund a comprehensive strategy utilising technical, advocacy and political skills to achieve the elimination of the remaining non-tariff barriers to Canadian beef”.⁵ There is no question that the industry, with its allies in Canada’s trade and agriculture ministries, is poised to take full advantage of CETA to push its agenda to weaken EU standards.

IN CONTRAST TO EU AGRICULTURAL PRACTICES, CANADA RELIES HEAVILY ON CHEMICAL INPUTS AND GENETIC ENGINEERING, AND ALLOWS INTERNATIONALLY BANNED ADDITIVES AND PROCESSES

Canada is a significant cultivator of genetically engineered crops. Canada is one of just five countries that together account for 90 percent of genetically engineered crops in the world. Globally, it was the fifth-largest producer in 2015.⁶ Genetically modified varieties account for a very large percentage of four crops grown in Canada – canola (rapeseed), corn (maize), soy and sugar beet. Canola is Canada’s biggest crop and accounts for one-fifth of all farmland,⁷ and fully 95 percent of Canadian-grown canola is genetically modified (GM).⁸ Most canola is exported.⁹

Rampant use of GMOs has led to several problems, including a dramatic rise in herbicide use and threats to biodiversity.¹⁰ Canada’s GM crops are engineered for insect resistance and herbicide tolerance, and are specifically designed for use with Monsanto’s herbicide ‘Roundup’.¹¹ The active ingredient of Roundup is glyphosate, classified as ‘probably carcinogenic’ by the World Health Organisation,¹² the use of which has resulted in five glyphosate-resistant weeds in Canada.¹³ GMOs also threaten biodiversity, as they readily spread through ecosystems via cross-pollination and interbreeding.¹⁴ In Canada, genetically modified canola is so pervasive that it can be found in products that are purported to be GMO-free, such as honey.¹⁵

In contrast, only one genetically modified crop, a corn variety, is authorised for cultivation in the EU, and it is grown in an insignificant quantity in Spain and Portugal.¹⁶ In 2015, GM crops were being grown on only 0.14 percent of the arable land in all of Europe.¹⁷ EU Directive 2015/412 allows EU member states to restrict or prohibit the cultivation of genetically modified organisms in their territory. Seventeen member states (Austria, Bulgaria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland and Slovenia) and three regions (Wallonia in Belgium, and Scotland and Wales in the UK) have done so.¹⁸

Canada has weak oversight of GM crops and food, and doesn't require labelling. Both Canada and the EU regulate GM crops and foods as 'novel foods' and require prior approval of biotechnology-derived products, but there are significant differences in the practical application of their rules.¹⁹ Canada's approach to risk assessment gives industry more control over the information relied on by regulators, and limits the scope of evaluations of risks and hazards.²⁰

The Canadian system collects limited and largely industry-generated data about GM crops, has approved more products for production or sale (including genetically modified salmon, apples and potatoes), has weak oversight functions, and provides consumers with little information about what is in their food.²¹ The Canadian government does not require labelling,²² even though public opinion surveys conducted over 20 years consistently show that more than 80 percent of Canadians support the labelling of GM foods.²³

GM SALMON IN CANADA

The difference between Canada's fast-track approvals of GMOs and limited regulation compared to the EU's approach is illustrated by Canada's speedy approval and sale of genetically modified salmon. In March 2016, Health Canada, a federal institution, and the Canadian Food Inspection Agency (CFIA) approved AquAdvantage Salmon, the first genetically modified animal to be approved for human consumption in the country.

Health Canada did not require labelling, instead giving the production firm AquaBounty Technologies the option of labelling the product voluntarily.²⁴ According to a report released in August 2017, about 4.5 tonnes of GM salmon fillets have already been sold in Canada – without labelling.²⁵ This means that Canadians have been consuming GM salmon without their knowledge.

Reportedly, AquaBounty wanted prompt approval of its GM salmon eggs in order to export them to China, Argentina, Brazil and Panama, and pressured CFIA to fast-track safety tests on these eggs.²⁶ Several Canadian civil society organisations challenged the approval of GM salmon in court, arguing that the Canadian government's assessment did not adequately consider the potential environmental impact of GM salmon.^{27 28} The court ruled in favour of the Canadian government, thus upholding its inadequate environmental assessment.

Canada's parliamentary Standing Committee on Agriculture and Agri-Food conducted a study in late 2016 on GM animals for human consumption. Its recommendations included greater transparency in the regulatory system for GM animals, and mandatory labelling and traceability systems.²⁹ To date, the government has failed to act on these recommendations and Canada still lacks transparency, mandatory labelling, and traceability of GM foods. CETA may boost salmon exports from Canada to the EU by lowering tariffs and expanding quotas.³⁰

Given the absence of labelling and traceability in Canada, and considering that GM salmon is not authorised in the EU, each import of Canadian salmon would need to be tested in order to avoid the import of any GM fish.

In contrast, the EU mandates the labelling of foods containing more than 0.9 percent of GM ingredients, and requires farmers and food and feed manufacturers to track GMOs and GM food and feed at all stages of the supply chain.³¹ The EU focus on traceability is key to effective oversight and labelling, and underpins the EU's stricter regulation of inadvertent GM contamination of foods.

Canada's weak oversight of the GMO supply chain has led to contamination of foods intended for export and created conflict with EU regulators; in 2009, EU regulators turned back cereals, bakery products, baking mixes and nut/seed products found to have been contaminated with GM flax not approved for human consumption, except in Canada and the US.³² While EU regulators have a zero-tolerance policy requiring goods contaminated with non-approved GMOs to be withdrawn from the market, Canada has promoted international standards that allow for GMO contamination.³³

Canada allows the use of growth promotion drugs, including hormones and antibiotics, a practice banned in the EU. The EU prohibited the use of growth hormones for farm animals in 1996, and the ban applies both to member states and imports from non-EU countries.³⁴ This ban has been maintained and expanded over many years based on a series of scientific opinions on the risks to human health, which found that 'no acceptable daily intake could be established for any of these hormones' and that oestradiol 17 β , in particular, is 'considered a complete carcinogen'.³⁵

Since 2006, the EU has also banned the use of any antibiotics in animal feed for growth promotion purposes.³⁶ Routine antibiotic use in animals – for growth promotion and overall disease prevention in crowded conditions – is contributing to widespread antimicrobial resistance through superbugs that have mutated after exposure to these drugs.³⁷ This phenomenon poses a serious threat to global public health, as medicines become ineffective in combatting human infections, leading to deaths.³⁸

By contrast, growth hormones have been widely used in beef cattle in Canada since the 1960s.³⁹ Health Canada (the federal body that regulates and approves the use of products from a health perspective) has approved the use of six hormonal growth promoters in beef cattle: three natural hormones (progesterone, testosterone and estradiol-17 β), and three synthetic hormones (trenbolone acetate, zeranol and melengestrol acetate).⁴⁰ Health Canada dismisses health concerns about hormone use in meat production, unlike its EU counterpart.⁴¹ Canada also allows use of antibiotics for growth promotion in the production of meat and poultry products.⁴² Canada and the US have attacked the EU ban on growth hormones in WTO dispute settlement procedures.⁴³ CETA provides

them with new avenues to challenge the EU's ban on growth hormones.

The Canadian meat industry applies chemical washes after slaughter as a cheap substitute for good hygiene throughout production, making EU-banned practices a standard in Canada. As in the US, in Canada, animal carcasses and parts are often cleaned with chemicals after slaughtering.⁴⁴ Health Canada allows a wide range of chemical washes for use on beef or poultry, including antifreeze and chlorine bleach.⁴⁵

The EU has taken a markedly different 'farm to fork' approach to food hygiene and safety. This policy reflects European consumers' public health concerns and clear preference for meat that has not undergone any chemical treatments.⁴⁶ Since 1997, the EU has required that only water may be used to wash poultry carcasses for sale in the European market. Other treatments, including peroxyacids and chlorine, have not been approved to date based on insufficient evidence of efficacy, and because of concerns about increasing the risk of antimicrobial resistance.⁴⁷

Until recently, the water-only policy applied to beef as well. Pressured by the US government and the meat industry in 2013 when negotiations for TTIP (the US-EU trade deal) were active,⁴⁸ the EU modified the prohibition with respect to beef, allowing use of lactic acid in slaughterhouses to decontaminate beef carcasses, half-carcasses, and beef quarters.⁴⁹

CETA'S REGULATORY COOPERATION PROVISIONS PUT EU FOOD STANDARDS AT RISK

The Canadian government has a history of initiating and participating in challenges at the World Trade Organisation (WTO) against food safety standards of the EU and other trading partners, including against country of origin labelling,⁵⁰ biotechnology (including GMO) review and approval procedures,⁵¹ and bans on hormones in beef.⁵² CETA provides additional opportunities for such challenges by both governments and transnational corporations.

Through its regulatory cooperation provisions, CETA effectively institutionalises a preference for weaker standards. As Canada lacks many of the EU's food safety standards and has a farm economy heavily dependent on practices banned or restricted in the EU, there is a powerful economic incentive to use CETA to undermine these standards. This is because tariff reductions alone will fail to provide the promised economic benefits. Advocating for regulatory cooperation in CETA and other trade deals, the president and CEO of the Canadian Chamber of Commerce made the case: "In some cases, we're looking at a 1,700%-increase in price for a Canadian product abroad, once you factor in the costs of regulatory conformity."⁵³

What is regulatory cooperation? At its heart, regulatory cooperation is a cross-border process for early review and collaboration on regulations to align standards so that they are as similar as possible. The result is generally to move to an international standard that is less protective of the public interest, and in many cases drafted with heavy industry involvement.⁵⁴ Other regulatory cooperation elements include requiring impact assessments of proposed and existing regulations to identify and eliminate anything perceived as a trade barrier. This paves the way for corporate challenges to environmental, food safety and other public interest regulations that stand in the way of increased trade.

Regulatory cooperation also includes mutual recognition agreements that allow imports of products even when countries continue to have different standards.⁵⁵ This means that Canada’s weak food safety or GMO contamination standards could be declared ‘equivalent’ in a mutual recognition agreement, allowing currently banned products to be imported into the EU.

Regulatory cooperation provides corporations with a powerful toolkit to use in secretive international meetings, enabling them to convince regulators to roll back public interest regulations. Multiple rounds of industry review and new layers of cost-benefit analysis will delay necessary public protections or even prevent their adoption.^{56 57} The focus is on cutting costs – not improving health and safety.⁵⁸ CETA follows this model, establishing mechanisms to scrutinise new and existing regulations at the earliest stages of their development to ‘prevent and eliminate unnecessary barriers to trade and investment’, and to pursue ‘regulatory compatibility, recognition of equivalence, and convergence.’⁵⁹

CETA’s regulatory cooperation is mislabelled as ‘voluntary’. Supporters of CETA claim that regulatory cooperation activities are purely voluntary as stated in CETA Article 21.2 (6),⁶⁰ and thus of no concern. In fact, both Canada and the EU are bound by the regulatory cooperation mechanism to try to synchronise their regulations over time.⁶¹ This deregulation focus is embedded throughout CETA in:

- The chapter on technical regulations emphasising compatibility of standards, targeting the EU’s GMO and country-of-origin labelling requirements, as well as more comprehensive chemical and pesticide protections.⁶²
- The required biotechnology market access dialogues focused on “asynchronous” approvals and “accidental release of unauthorised products”, squarely aims at increasing the EU’s approvals of GMOs and changing its policy of zero tolerance on contamination.⁶³
- The rules seeking to declare food safety standards “equivalent”, to allow the sale of non-conforming products such as exports of “chlorine chicken” and

other meats (even though the EU’s farm-to-fork approach to hygiene and Canada’s chemical-based meat washes represent radically different systems of food safety).⁶⁴

- The requirement that licensing regulations (broadly defined) “are as simple as possible, and do not unduly complicate or delay the supply of a service, or the pursuit of any other economic activity,”⁶⁵ a deregulation mandate that could apply to many food-related activities, including meat processing.⁶⁶

Alarming, in addition to these chapter-by-chapter requirements, CETA includes a comprehensive regulatory cooperation chapter intended to apply across virtually every area of domestic policy (Chapter 21). In addition to encouraging information exchanges and bilateral discussions, this chapter includes a provision urging Canada and the EU to jointly establish a “common scientific basis” which, if effected, could severely erode the EU’s precautionary principle in order to further the agribusiness ambition of more market access.⁶⁷ While the activities outlined in the chapter are technically “voluntary”, a refusal to participate must be explained to the other party, and the entire process is overseen by the Regulatory Cooperation Forum (RCF) and the powerful CETA Joint Committee.

The CETA Joint Committee has broad authority to make decisions binding on both Canada and the EU and to resolve any issues concerning implementation and interpretation of the agreement. **While the scope of its authority is unclear, legal questions have been raised about the extent to which domestic policy changes could be made through the Joint Committee without consultation with parliamentary bodies.**⁶⁸ The RCF, made up of high-level officials from each government, appears to be modelled on a regulatory cooperation body established between Canada and the US following NAFTA. The NAFTA experience shows that even voluntary regulatory cooperation lowers standards, reduces transparency, and increases corporate influence on the regulatory process [see box].



REGULATORY COOPERATION UNDER NAFTA – A BAD MODEL FOR CETA

Canada has experience with regulatory cooperation under the North American Free Trade Agreement (NAFTA). NAFTA spurred the integration of US and Canadian agricultural markets by lowering tariffs and harmonising food safety regulations.⁶⁹ US-Canada regulatory harmonisation under NAFTA has been heavily influenced by multinational corporations, and has included a focus on pesticide standards and research, food safety systems, labelling and food processing.⁷⁰

Even though these harmonisation initiatives have been voluntary, the Canadian government ‘used the excuse of North American cooperation as a justification’ to avoid improving the regulation of toxins, food safety and biotechnology.⁷¹ Since NAFTA, Canada has “gradually deregulated, under-regulated and moved toward industry self-reporting in order to ‘reduce the burden’ on business.”⁷² Food safety standards have deteriorated.⁷³ Canada, once a leader in the assessment and regulation of toxic chemicals, has fallen significantly behind the EU.⁷⁴ Canada and the US both have weak standards allowing pesticide residue contamination in foods, and harmonisation initiatives in North America have helped keep these regulations industry-friendly.⁷⁵

In 2011, a US-Canada Regulatory Cooperation Council (RCC) was created to coordinate regulatory harmonisation efforts.⁷⁶ Composed of senior regulatory, trade and foreign affairs officials, the RCC institutionalised prior regulatory cooperation activities conducted through ad-hoc working groups.⁷⁷ The RCC relies heavily on industry guidance and participation. For example, just three of 24 regular members of an RCC technical committee to assess the risk of new and existing chemicals represent health or environmental concerns; most members represent industries.⁷⁸

An RCC initiative to harmonise meat inspection, certification and processing to be “more coherent, streamlined and less cumbersome”, has adopted a work plan directly from the North American meat lobby: “to the greatest extent



possible, implement the Canadian Meat Council (CMC) and the North American Meat Institute (NAMI) proposal to streamline export requirements”.⁷⁹ The industry-written meat plan is one of several RCC initiatives that aims at “simplification” in order to “reduce or eliminate certain inspection activities, certifications and administrative procedures concerning food safety”.⁸⁰

Details are not available on the RCC website, which provides limited information about either the committee’s process or the substance of its decisions.⁸¹ This lack of transparency, coupled with a heavy reliance on industry policy proposals, should raise red flags about the Regulatory Cooperation Forum established in CETA, which appears to be modeled on the RCC.⁸²

The Canadian government, allied with agribusiness, is already acting to undermine food safety through CETA's regulatory cooperation measures. The Canadian meat industry and other industry groups have long advocated for CETA and for international regulatory cooperation, and they are clear about their intended goal: to get around, either directly or indirectly, EU standards that prevent the sale of Canadian products in EU markets or those that add to the cost of production.⁸³

Industry groups have explicitly sought to adopt the NAFTA model in CETA. As Perrin Beatty, president and CEO of the Canadian Chamber of Commerce put it: "government can provide the leadership to remove these hurdles. Through initiatives like the Canada-US Regulatory Cooperation Council, by building regulatory cooperation measures into trade agreements and by providing industry with dashboards to evaluate progress, we can make Canadian companies more competitive."⁸⁴ There are strong parallels between NAFTA's RCC and the Regulatory Cooperation Forum established in CETA, including an open door for industry participation in working groups.⁸⁵

Canadian industry is not waiting for CETA's ratification to advance its deregulatory agenda. While welcoming the trade deal with the EU, Canadian agribusiness has made clear its objection to the continued existence of stricter EU food safety standards, saying they are inconsistent with CETA and a problem that must be resolved. Soy Canada, "the national association uniting all groups driving the Canadian soybean industry", has complained that the EU is delaying approving GMO soy products, with Executive Director Jim Everson stating that EU "commitments made in CETA negotiations are not being honoured".⁸⁶

The Canadian meat producing, packing and processing industries have complained of 'technical barriers' that remain in place even after CETA's signing, which prevent export of their products to the EU.⁸⁷ Ron Davidson of the Canadian Meat Council has said that it won't be possible to take advantage of the import quotas in CETA unless "technical negotiations regarding microbial treatments and the equivalence of our meat inspection systems" are resolved in Canada's favour.⁸⁸ In parliamentary hearings, the Canadian Cattlemen's Association conditioned its support of CETA implementing legislation with a demand for 'a commitment from the government of Canada to develop and fully fund a comprehensive strategy utilising technical, advocacy and political skills to achieve the elimination of the remaining non-tariff barriers to Canadian beef'.⁸⁹

The Canadian government appears anxious to make that commitment. Canadian Agriculture Minister Lawrence MacCauley says he has already raised the complaints about the ban on chemical washes with EU officials and that talks are ongoing.⁹⁰ Reportedly, Canada has plans to submit

official applications to the EU to have two antimicrobial products approved for carcass treatment.⁹¹

Because so many of the EU's food standards are far more protective than Canadian regulations – including limitations on GMOs and cloning, food labelling, restrictions on growth promotion drugs and on antimicrobial chemical washes, animal welfare protections and pesticide exposure limits – they are at significant risk of being 'harmonised' downward, or challenged as an unfair restraint on trade.

Unless the parliaments of EU member states act now to block CETA ratification, we can expect Canada to use CETA's new regulatory cooperation tools to respond to agribusiness demands to attack stricter EU food standards, and to effectively halt efforts to strengthen protections on both sides of the Atlantic.

ENDNOTES

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