



Karel De Gucht  
Trade Commissioner  
European Commission  
Rue de la Loi 200  
B-1049 Brussels

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Dear Commissioner,

In light of the EU-Canada CETA negotiations taking place in Brussels, I would like to restate some of BUSINESSEUROPE's commercial objectives for this agreement. In addition to our call tariff and non-tariff barrier elimination for goods, we have a number of behind-the-border issues to be addressed.

Procurement liberalisation covering all governmental bodies and public entities remains our priority. The main challenge for EU companies on the Canadian market has been restrictions to procurement at provincial level – where most markets of interest are regulated. Canadian provinces have authority over key economic issues like energy, transport, health, construction and environmental services and many Canadian service providers are provincially- or municipally-owned companies. Restrictions in the procurement field are numerous including: nationality restrictions for bidders, local content rules for contracts, certification/standards requirements that favour local suppliers, difficulties in getting skilled employees into the country, and tax incentives that favour domestic suppliers over EU suppliers. Ideally, the Commission will pursue a strategy to remove all of these restrictions through the FTA. However, we should not look at this negotiation as a zero-sum-game but rather as an opportunity for closer cooperation and joint projects between Canadian and European firms.

BUSINESSEUROPE is also concerned about the deficient level of protection of intellectual property rights in Canada. Most strikingly, European innovative pharmaceutical companies face unfair and discriminatory judicial processes and weaker patent and regulatory data protection compared to those applicable in Europe. For instance, Canada's *Patented Medicines (Notice of Compliance) Regulations* does not provide innovators with an effective right of appeal in the event of an unfavourable decision by the courts which constitutes a clear lack of due process. The EU should correct this inequitable situation as an early harvest in the discussions. The agreement should also establish a level-playing field for regulatory data protection and patent term restoration (i.e. supplementary protection certificate) by applying EU standards. In addition, EU should aim to ensure high regulatory standards for medicinal and biological products.

The Canadian Copyright Act has been up for improvement in the Canadian parliament but has failed to pass due to the many elections recently. Adopting this new law will improve the situation for copyright holders considerably. Canada and the EU have also advanced their cooperation in the recognition of geographical indications (GIs) for

wines and spirits and should pursue these negotiations in a similarly manner on other food products. While there are specific legal challenges for some products, the vast majority of GIs do not pose any serious problems for the Canadian legal system or for Canadian companies. While both of these issues are necessities for the agreement, the EU should be keenly aware that these concessions do not pose any threat to Canadian commercial interests.

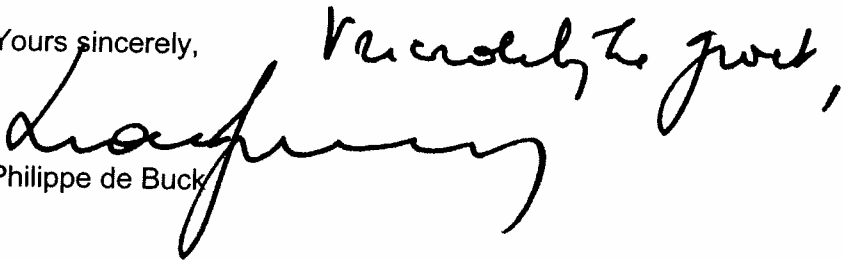
Barring the case on postal services that threatens to evict European express delivery companies from the market and whose solution should be a prerequisite for any agreement, there are few problems associated with the protection of investments or services in Canada. However, there are still restrictions to foreign investment through equity caps in some sectors (banking), residency/nationality requirements for management boards and some prior government review of investments in strategic sectors (telecoms, infrastructure, mining, etc.). There are many government insurance schemes (health, car insurance) that should, if opened up to competition, also be opened to EU firms. There are also some complications in gaining access to the Canadian market for professionals (temporary work visas) and for the recognition of qualifications (engineers, technicians, etc.). This problem could be addressed by allowing personnel into the country linked to specific business contracts. .

Canada has a globally important energy sector in which European firms are large investors. Recently, EU firms became partners in large Canadian carbon capture and storage (CCS) projects and there are big opportunities for EU companies in future hydroelectric projects and projects to refurbish existing power plants with new environmental equipment. The CETA should facilitate opportunities for cooperation in the energy sector by removing any restrictions to EU company participation in energy and related projects. Cooperation on climate policy could also reduce investment costs for major CCS or other carbon mitigating projects. In a related area of cooperation, the EU and Canada should remove tariff, non-tariff and regulatory barriers that hinder trade in renewable and energy efficient power equipment in the FTA. This can then serve as a basis for the biggest component of a future WTO plurilateral agreement on environmental goods and services.

Regulatory cooperation should be a central element of a future agreement to prevent unintended disruptions of trade and investment projects. A binding requirement to consult the other party on regulations that may affect their trade and investment interests would be a first step to ensure that companies in both economies benefit fully from the CETA while maintaining an appropriate level of regulation by enhancing coordination over new or amended regulations.

I thank you for taking these concerns into account in the CETA negotiations.

Yours sincerely,

  
Philippe de Buck