



Council of the
European Union

Brussels, 15 December 2015
(OR. en)

9036/09
EXT 2

WTO 80
SERVICES 21
CDN 13

PARTIAL DECLASSIFICATION

of document: 9036/09 WTO 80 SERVICES 21 CDN 13 RESTREINT UE

dated: 24 April 2009

new status: Public

Subject: Recommendation from the Commission to the Council in order to authorize the Commission to open negotiations for an Economic Integration Agreement with Canada

Delegations will find attached the partially declassified version of the above-mentioned document.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 April 2009

9036/09

**WTO 80
SERVICES 21
CDN 13**

"A" ITEM NOTE

from: Coreper
to: Council
No. Cion prop. 8590/09 WTO 68 SERVICES 17 CDN 9 RESTREINT UE
Subject: Recommendation from the Commission to the Council in order to authorize the Commission to open negotiations for an Economic Integration Agreement with Canada

1. The Commission submitted the above-mentioned Recommendation on 7 April 2009. The Recommendation was examined by the Article 133 Committee, as well as by the Working Party on Transatlantic Relations (COTRA).

2. Following its discussion on 23 April 2009, the Permanent Representatives Committee agreed to invite the Council, as an "A" item at its session on 27 April 2009 to:
 - authorize the Commission to negotiate, on behalf of the European Community and its Member States, an Economic Integration Agreement with Canada;

- **NOT DECLASSIFIED**;
 - appoint, in accordance with the Treaty, the special Committee foreseen in Article 133 of the Treaty, to assist it in this task;
 - issue the negotiating directives attached in ANNEX I.
 - enter the Statements reproduced in ANNEX II into its minutes;
 - repeal the negotiating authorization adopted on 21-22 December 2004 for the negotiation of a bilateral Trade and Investment Enhancement Agreement with Canada.
-

NEGOTIATING DIRECTIVES**NATURE AND SCOPE OF THE AGREEMENT**

1. The Agreement will exclusively contain provisions on trade and trade-related areas applicable between the parties.
2. The Agreement shall be comprehensive, balanced, and fully consistent with World Trade Organisation (WTO) rules and obligations. The Doha round remains the priority of the EU. The negotiations will be conducted and concluded with due regard to commitments under WTO.
3. The Agreement shall provide for the progressive and reciprocal liberalisation of trade in goods and services as well as rules on trade-related issues, with a high level of ambition going beyond existing WTO commitments.
4. The Agreement shall include substantial, explicit and binding commitments in all those areas under negotiation which fall, wholly or in part, under the jurisdiction of Canadian Provinces and Territories.

The Agreement shall enter into force only upon the completion of the necessary procedures to bind the Canadian Provinces and Territories in all those areas under negotiation which fall wholly or in part under their jurisdiction.

PREAMBLE AND GENERAL PRINCIPLES

5. The preamble will recall that the partnership with Canada is based on common principles and values as reflected in the 1976 Framework Agreement and in successive declarations and action plans that have followed it. It will also refer, inter alia, to:
 - The commitment of the parties to sustainable development and the contribution of international trade to sustainable development in its economic, social and environmental dimensions, including economic development, poverty reduction, full and productive employment and decent work for all as well as the protection and preservation of the environment and natural resources;
 - The commitment of the parties to an agreement in full compliance with their rights and obligations arising out of the WTO;

- The right of the parties to take measures necessary to achieve legitimate public policy objectives on the basis of the level of protection that they deem appropriate, provided that such measures do not constitute a means of unjustifiable discrimination or a disguised restriction of international trade;
- The belief that the agreement will create a new climate for economic relations between the two parties and above all for the development of trade and investment;
- The shared objective of the parties to taking into account the particular challenges faced by small and medium-sized enterprises in contributing to the development of trade and investment;
- The commitment of the parties to communicate with all relevant interested parties, including the private sector and civil society organisations.

TITLE 1: OBJECTIVES

6. The Agreement shall confirm the joint objective of progressively and reciprocally liberalising substantially all trade in goods and services and establishment, in full compliance with WTO rules, notably Articles XXIV GATT and V GATS.

7. The Agreement will recognise that sustainable development is an overarching objective of the parties and will aim at ensuring and facilitating respect of international environmental and social agreements and standards. The Agreement will recognise that the parties shall not encourage trade or foreign direct investment by lowering domestic environmental, labour or occupational health and safety legislation, and standards or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity.
- The Agreement's economic, social and environmental impacts will be examined by means of an independent Sustainability Impact Assessment (SIA), which the Commission shall undertake in parallel with the negotiations, the findings of which will be taken into account in the negotiating process. The SIA, which will be finalised ahead of signature of any final agreement, will aim to clarify the likely effects of the Agreement on sustainable development on both sides, and the potential impact on other countries, in particular LDCs, as well as to propose measures (trade or non-trade) to maximise the benefits of the agreement and prevent or minimise potential negative impacts. To address such measures, sustainable development will be taken into account throughout the agreement, including in the form of a specific chapter on trade and sustainable development, covering both social and environmental issues.

TITLE 2: TRADE IN GOODS

8. Duties on imports and exports and non-tariff measures

The aim of the Agreement will be to dismantle import duties and charges having an equivalent effect on both sides within, in principle, 7 years with a view to offering similar market access opportunities on both sides at the end of this period. The Agreement will cover substantially all trade in goods between the parties. The aim will be to ensure the highest possible degree of trade liberalisation.

Negotiations on tariff reduction shall take place on the basis of the duties applied by the EC *erga omnes* on the date of launch of negotiations and of the duties applied by Canada *erga omnes* on the date of launch of negotiations. As from the first day of the start of the negotiations, the Parties shall agree that any increase in tariff duties shall not be taken into account during the negotiations.

9. The Agreement shall provide, in principle, for a maximum of frontloading of full liberalisation commitments, including environmental goods and services, taking into account the importance of ensuring to the maximum extent feasible parity with FTAs being negotiated by Canada with other major trading partners.
10. The agreement will pay particular attention to addressing trade related regulatory issues and non-tariff barriers (NTBs). To this end, the Agreement will forbid any ban, restriction or other NTBs to trade, which is not justified by the general exceptions set out below, and which could amount to a means of arbitrary discrimination or a disguised restriction on trade between the parties. Priority shall be given to provisions and procedures that will be included to ensure the elimination of unjustified non-tariff obstacles to trade.
The Agreement will contain provisions concerning the prohibition of fiscal discrimination. Product-specific NTBs shall be solved on a request and offer basis, in parallel with exchanges on tariff concessions. Given the relevance of furthering the objectives of the Agreement and to improve market access at a level greater than that delivered through horizontal rules, the Agreement should include sector specific commitments on NTBs; sectors requiring particular attention include automotives and electronics. The Agreement will also envisage appropriate procedures to prevent NTBs and other unnecessary obstacles to trade, including through transparency in regulations.
11. The Agreement shall provide for mechanisms through which to address the issues of agricultural export subsidies and State Trading Enterprises, assessing any possible distortion of competition and barriers to trade and investment these issues could create.
12. Given the particular significance of fisheries and aquaculture in the economic relationship with Canada, the objective of the negotiations will be to ensure a balance between the mutual concessions with regard to market access, investment and services.
13. All customs duties, taxes, fees, or charges on exports and quantitative restrictions on exports to the other party which are not justified by exceptions under the Agreement shall be abolished upon the application of the Agreement.
14. Rules of origin
An annex setting out rules of origin and providing for administrative co-operation and which would take into account the results of the current process of reform of rules of origin will be attached to the Agreement.

15. Anti-fraud measures

A clause in the Agreement concerning enhanced administrative co-operation will set out the procedures and appropriate measures that the parties may take where a lack of administrative co-operation in customs matters, irregularities or fraud are established.

16. Management of administrative errors

Provisions should also be included to examine jointly the possibility of adopting appropriate measures in case of errors committed by the competent authorities in the application of the preferential rules of origin.

17. Technical regulations, standards and conformity assessment procedures

Apart from confirming the provisions of the WTO Agreement on Technical Barriers to Trade, the parties shall also establish provisions that build on and complement such provisions, with a view to facilitating access to each other's markets. The Agreement will contain a number of general principles (such as proportionality, no undue restrictions, transparency, non-discrimination) as set out in the WTO Agreement on Technical Barriers to Trade, to be applied by the parties in their mutual trade. It should also include provisions on the adoption of recognised international standards, where appropriate, as well as provisions aiming at the compatibility of testing requirements in a number of priority sectors. The Agreement shall contain provisions aiming at improving dissemination of information to importers and exporters and developing common views, and at promoting good regulatory practice, compatibility and convergence of technical regulations and conformity assessment, as well as close co-operation with and between relevant organisations responsible for standardisation and accreditation

18. Sanitary and phytosanitary measures

On sanitary and phytosanitary measures, the conditions negotiated shall follow the provisions of the negotiating directives adopted by the Council on 20 February 1995 (Council document 4976/95) and shall fully respect the provisions of the existing Agreement between the EC and Canada on sanitary measures to protect trade in Live Animals and Animal Products. Furthermore, the Agreement will refer to a number of commitments and general principles of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures including proportionality, undue delays, transparency and non-discrimination, and measures based on international standards, guidelines or recommendations, to be applied by the parties in their mutual trade, with the objective of facilitating access to each other's market while safeguarding public, animal and plant health.

The Agreement should in particular seek to achieve full transparency as regards sanitary and phytosanitary measures applicable to trade, work towards the establishment of a reciprocal mechanism for recognition of equivalence including work towards recognition of pest-free status of the parties and the principle of regionalisation for plant pests, while maintaining essential minimal checks at the external border.

19. General exceptions

The Agreement will include a general exception clause based on Articles XX and XXI GATT.

20. Safeguards

To maximise liberalisation commitments, the Agreement may contain a bilateral safeguard clause by which either party may restore most-favoured-nation duties where a rise in imports of a product from the other party is causing or threatening to cause serious injury to its domestic industry.

21. Anti-dumping and countervailing measures

The Agreement will include a clause on anti-dumping and countervailing measures providing that any of the parties may take appropriate measures against dumping and/or countervailable subsidies in accordance with the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or the WTO Agreement on Subsidies and Countervailing Measures. The Agreement will also integrate commitments that go beyond WTO rules in this area in line with EC rules and previous agreements (e.g. public interest test and lesser-duty rule, additional consultations).

TITLE 3: TRADE IN SERVICES, ESTABLISHMENT

22. The Agreement shall provide for the progressive and reciprocal liberalisation of establishment and of trade in services with the aim to ensure the highest level of market access opportunities, without any a priori exclusions, consistent with the relevant WTO rules, in particular Article V of the GATS. This is without prejudice to the possible exclusion of a limited number of sectors from the liberalisation commitments.

Audiovisual and other cultural services shall not be covered by this title.

The services supplied in the exercise of governmental authority as defined by Article I-3 of the GATS shall be excluded from these negotiations.

The Agreement shall not be inconsistent with the provisions of other Agreements between the EC and its Member States and Canada.

23. Respecting the respective competences of the EC and its Member States, the parties shall agree to establish a framework for establishment, which will be based on principles of transparency, non-discrimination, market access, stability and on general principles of protection, based on the Minimum Platform on Investment for EU FTAs, as agreed within the framework of the Article 133 Committee (doc. St 7242/09).
- Within this framework, the parties shall agree to grant treatment no less favourable for the establishment in their territory of the companies, subsidiaries or branches of the other party than that accorded to their own companies, subsidiaries or branches, taking due account of the sensitive nature of certain specific sectors.
- Nothing in this framework shall be taken to limit the rights of investors of the parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Community and Canada are Parties.
24. The negotiations shall address barriers to market access and limitation on national treatment across all economic sectors and modes of supply, taking due account of the sensitive nature of certain specific sectors; they shall also aim to establish regulatory disciplines needed to underpin and facilitate trade. The Agreement will establish the necessary steps for the negotiation of agreements providing for the mutual recognition of requirements, qualifications, licences and other regulations.
25. EU investors and service suppliers shall be granted at least parity with the treatment granted to investors and service suppliers of any third country as regards cross-border supply of services and establishment.
26. The Agreement will not preclude the enforcement of exceptions on the supply of services justifiable under the relevant WTO rules (Articles XIV and XIV bis GATS). The Commission should also ensure that nothing in the Agreement should prevent the Parties from applying their national laws, regulations and requirements regarding entry and stay, work and labour conditions provided that, in doing so, they do not nullify or impair the benefits accruing from the Agreement.

TITLE 4: COOPERATION IN THE FIELD OF AUDIO-VISUAL AND OTHER CULTURAL SERVICES

27. Audio-visual and other cultural services will be treated in a specific audio-visual and cultural co-operation framework. In developing this co-operation framework, the parties will maintain the possibility to preserve and develop their capacity to define and implement their cultural and audio-visual policies for the purpose of preserving their cultural diversity, while promoting cultural and audio-visual exchanges and favouring inter-cultural dialogue.
- Any cooperation in the cultural and audiovisual field, whatever form it may take, should not contain any measure related to market access.

TITLE 5: PUBLIC PROCUREMENT

28. The Agreement should aim for maximum ambition complementing the Government Procurement Agreement in terms of coverage (procuring entities, sectors, thresholds, services contracts). The Agreement will ensure mutual access to public procurement markets at all administrative levels (national, regional and local) in the traditional sector as well as in the field of public utilities, ensuring treatment no less favourable than that accorded to locally-established suppliers. Market access provisions will extend to the relevant bodies governed by public law and to undertakings operating in the field of utilities.

TITLE 6: TRADE AND COMPETITION

29. The Agreement shall include provisions on competition addressing competition rules and their enforcement.
30. The Agreement shall contain provisions on State aid. Furthermore, it shall also address state monopolies, state enterprises and enterprises entrusted with special or exclusive rights.
31. The Agreement will refer to the intention of the parties to further reinforce cooperation in the field of anti-trust and merger control, through the negotiation of a specific agreement. Furthermore, the Agreement shall include a commitment by both Parties to maintain comprehensive laws as well as to maintain an authority for the effective enforcement of such laws in a transparent and non-discriminatory manner.

TITLE 7: INTELLECTUAL PROPERTY RIGHTS

32. The Agreement will include rules to ensure effective and adequate protection and enforcement of intellectual property rights (IPR). The Agreement shall include commitments to adhere to or comply with multilateral and international agreements in this field, and ambitious provisions on IP rights (including geographical indications) and the effective fight against intellectual property infringements. The Agreement shall contain provisions effectively recognising geographical indications and protecting them *ex officio*, including the phasing out of current misuse of EU geographical indications in Canada, for instance linked with generic denominations or trademarks.

The agreement will include provisions on criminal sanctions and procedures.

TITLE 8: CAPITAL MOVEMENT AND PAYMENTS

33. The Agreement will strive for full liberalisation of current payments and capital movements, and include a standstill clause. It will entail carve-out provisions (e.g. in case of serious difficulties for monetary and exchange rate policy, or for prudential supervision, or taxation), which will be in accordance with the provisions of the EC Treaty on the free movement of capital. Negotiations shall take into account the sensitivities attached to the liberalisation of capital movements not linked to direct investment.

TITLE 9: CUSTOMS AND TRADE FACILITATION

34. The Agreement shall include provisions to facilitate trade between the parties, while ensuring effective controls. To this end it shall include commitments on rules, requirements, formalities and procedures of the parties related to import, export and transit. These provisions shall not duplicate or (unlike those relating to mutual assistance, see Paragraph 38 below) replace the customs cooperation provisions of the existing Customs Cooperation and Mutual Assistance Agreement or future amendments thereto.

Without prejudice to the previous paragraph:

35. The Agreement shall promote the effective implementation and application of international rules and standards in the field of customs and other trade-related procedures, including WTO provisions and World Customs Organisation instruments and, inter alia, the revised Kyoto Convention.

The Agreement shall include provisions to promote the recognition and exchange of best practice and experience, relating to particular areas of mutual interest. These areas may include issues such as modernisation and simplification of rules and procedures, standardised documentation, tariff classification, transparency, mutual recognition and inter-agency co-operation. The Agreement shall promote convergence in the trade facilitation field, building on relevant international standards and instruments as appropriate.

36. The Agreement shall promote effective and efficient IPR enforcement by customs authorities, regarding imports, exports, re-exports, transshipments and other customs procedures, and in particular as regards counterfeit goods.

37. The Agreement shall take account, in the provisions on trade facilitation, of the challenges faced by small and medium-sized enterprises

38. The Community shall aim to negotiate in the framework of this Agreement a Protocol on Mutual Administrative Assistance in Customs Matters, covering assistance with customs anti-fraud investigations (including assistance on request, spontaneous assistance and confidentiality).

TITLE 10: TRADE AND SUSTAINABLE DEVELOPMENT

39. The Agreement will include commitments by both sides in terms of the social and environmental aspects of trade and sustainable development. The Agreement will include provisions to promote adherence to and effective implementation of internationally agreed standards and agreements in the social and environmental domain as a necessary condition for sustainable development. The Agreement will also include mechanisms to support the promotion of decent work through effective domestic implementation of International Labour Organisation (ILO) core labour standards, as defined in the 1998 ILO Declaration of Fundamental Principles and Rights at Work as well as enhancing co-operation on trade-related aspects of sustainable development. It will also include provisions in support of internationally recognised standards of corporate social responsibility.
- The agreement should promote sustainable development by providing the right conditions to increase trade in environmental goods and services, including those that encourage the transition to a low carbon resource efficient global economy. Trade in environmental goods and services, as well as the elimination of those barriers which inhibit such trade, should be on the basis that the goods or services provide for a substantial overall benefit for the environment.

The EU and Canada will work closely together on relevant standards, processes and procedures related to sustainable development.

The Agreement will foresee the monitoring of the implementation of the commitments and of the social and environmental impacts of the Agreement through inter alia public review, public scrutiny and mechanisms to address disputes as well as instruments of encouragement and trade related co-operation activities, including with relevant international fora.

TITLE 11: REGULATORY COOPERATION

40. The Agreement will promote regulatory cooperation, with a view to removing obstacles to trade and investment through effective and efficient mechanisms, including, where appropriate, the reduction of unnecessary regulatory differences, so as to facilitate trade while ensuring quality and effectiveness of regulations.

To this end, consideration will be given to the inclusion of provisions on regulatory cooperation in certain specific areas not covered in the current voluntary framework, and to mechanisms for identifying potential obstacles to be addressed through regulatory cooperation.

TITLE 12: OTHER AREAS

41. The Agreement may include provisions regarding other areas related to the economic relationship where, in the course of negotiations, mutual interest was expressed in doing so. Possible areas so far mentioned in this respect include enhanced cooperation in e.g. maritime affairs and Arctic issues, raw materials, energy and areas related to science and technology.

TITLE 13: TRANSPARENCY OF REGULATIONS

42. The Agreement will include provisions regarding:

- The commitment to consult stakeholders in advance of the introduction of regulations with an impact on trade;
- The publication of, and public consultations on, all general rules with an impact on international trade in goods and services;
- The procedures to avoid trade problems arising from regulations at an early stage;
- Transparency as regards the administration, implementation and application of regulations having an impact on international trade and investment in goods or services, including appropriate review procedures;
- Enquiry points designed to provide specific information and to respond promptly to questions and enquiries regarding trade in goods and services.

TITLE 14: INSTITUTIONAL FRAMEWORK AND FINAL PROVISIONS

43. A clear legal and institutional link shall be established between the Agreement and the existing Framework Agreement or a future broad agreement to be concluded. This will ensure external coherence in particular in respect of the existence, application, suspension and termination of the respective provisions.
44. The Agreement will set up a specific Trade Commission to monitor the implementation of the Agreement. Committees on specific areas may be established as appropriate and will operate under the framework of the Trade Commission. The Trade Commission shall report to the Joint Committee established under the Framework Agreement.
45. **Dispute settlement**
The Agreement will include an appropriate and well-functioning dispute settlement mechanism, which will ensure that the parties observe mutually agreed rules.
The Agreement will include provisions for expedient problem-solving such as a flexible mediation mechanism. This mechanism would be without prejudice to the parties' rights and obligations or to dispute settlement provided for under the Agreement.
46. **Authentic languages**
The Agreement, which shall be equally authentic in all official EU languages, shall include a language clause to that effect.

TITLE 15: CONDUCT OF THE NEGOTIATIONS

47. The Commission shall conduct the negotiations in consultation with the Article 133 Committee. The Commission shall report regularly to this Committee and other relevant Committees on the progress of the negotiations.

In particular, on matters falling within their competence, Member States may attend the negotiating sessions and will be consulted for the establishment of negotiating documents, through the Ad Hoc Article 133 Committee (Services) and the Article 133 Committee (Deputies), as well as other relevant Committees.

As concerns negotiations on criminal sanctions and procedures, in particular on the type and level of criminal penalties and penal procedural law, for infringements of intellectual property rights, the Presidency, on behalf of the Member States, will fully participate in the negotiations on the basis of a position agreed by the Member States.

NOT DECLASSIFIED FROM THIS POINT UNTIL THE END OF THE DOCUMENT

(page 18 in the initial document)
