



Review of six years of CETA implementation

A mixed picture for trade and a clearly negative one for the environment

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January 2024 (update April 2024)



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Introduction

The trade section of the agreement between the EU and Canada, CETA has been in provisional application since 21 September 2017.

On 24 November 2023, a bilateral summit between Canada and the EU was held in Saint John's, providing an opportunity for both parties to express their satisfaction with the economic benefits of CETA and to announce the creation of a so-called new "Green Alliance"¹. At the launch of this alliance, Justin Trudeau and Ursula Von der Leyen reaffirmed " *their unwavering commitment to the Paris Agreement, and its strengthened implementation*".

However, the initial results of the provisional application of the trade section of CETA do not support this commitment.

The European Parliament also adopted on January 17, 2024 a very positive report on CETA, led by Javier Moreno Sanchez (a Spanish MEP from the Social Democrat group), which aims to urge all EU Member States to ratify CETA to trigger the agreement's definitive application².

Six years after the provisional application of the agreement commenced, it is now possible to formulate an initial qualitative and quantitative assessment of the impacts of CETA. Few analyses or evaluations have been published thus far, and in this regard, the European Parliament's draft report appears quite incomplete. The European Commission drew up fact sheets³ in September 2022, to mark 5 years of provisional application. But these documents present the information in a very positive light, even when the facts say otherwise. They portray the agreement as being very good for the environment. **However, the reduction in customs duties and the Agreement's trade-facilitating provisions (notably on temporary admission and trade in services) have helped to boost trade in greenhouse gas-intensive sectors such as fossil fuels, fertilisers, plastics, vehicles, chemicals, iron, steel, aluminium and nickel, transport and tourism.**

Furthermore, Canada has utilized the new regulatory dialogue spaces provided by CETA to push back against the strengthening of European legislation on health or environmental matters, such as ending import tolerances for products treated with pesticides banned in the EU or the European regulation on imported deforestation.

1. Current state of ratification

CETA was concluded by Canada and the European Council via the signature of Canadian Prime Minister Justin Trudeau and European Council President Donald Tusk on 30 October 2016, after a series of twists and turns caused by the Walloon Parliament's temporary refusal to sign.

Following this signature and the approval of the European Parliament on 15 February 2017, **CETA entered into a provisional application for the trade part of the agreement on 21 September 2017.** Ratification of the agreement by all 27 EU Member States is required for the full and final application.

By December 2022, 17 Member States had completed the internal ratification process (Austria, Croatia, Czech Republic, Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Spain and Sweden)⁴. **To date, 10 Member States** (Belgium, Bulgaria, Cyprus, France, Greece, Hungary, Ireland, Italy, Poland and Slovenia) **have yet to ratify the agreement.**

Rejection of the agreement in one of the Member States could bring down the whole edifice. At Germany's request, an interpretative declaration stated that *"If the ratification of CETA fails definitively as a result of a ruling by a Constitutional Court or following the outcome of another constitutional process and official notification by the government of the State concerned, provisional application must and will be terminated. The necessary steps will be taken in accordance with EU procedures."*⁵ But in this area, nothing seems automatic. Valérie Hayer, MEP and head of the Renaissance party's list for the European elections, has already indicated that the CETA could continue to apply in the event of a failure of ratification in France⁶.

CETA has already been the subject of a negative vote within the House of Representatives of Cyprus in July 2020. But this vote was never officially notified to Brussels by the Cypriot government, which plans to reschedule a new vote later. Several constitutional courts have also examined CETA. **In November 2022, the Irish Supreme Court ruled, in a case brought by a national parliamentarian, Patrick Costello, that ratification as it stood would be contrary to the Irish Constitution.** Consequently, parliamentary ratification presupposes amendments to the country's arbitration law⁷. **Another case challenging the constitutionality of the ratification of CETA is currently pending before the Irish courts.**

In France, in 2019, the National Assembly voted in favour of the CETA ratification law with 266 votes in favour and 213 against it, using an accelerated procedure. However, the text was never included in the Senate's agenda by the Government due to a lack of majority support. In the end, on the initiative of the Communist group, the text was examined and overwhelmingly rejected on 21 March 2024 (211 votes against and 44 in favour). It will now be up to the National Assembly to decide. But for now, the French government is blocking the parliamentary process between the Senate and the National Assembly⁸.

Chart 1 Status of national ratification



2. Commercial benefits of the agreement

2.1. Trade in goods

2.1.1. Global evolution

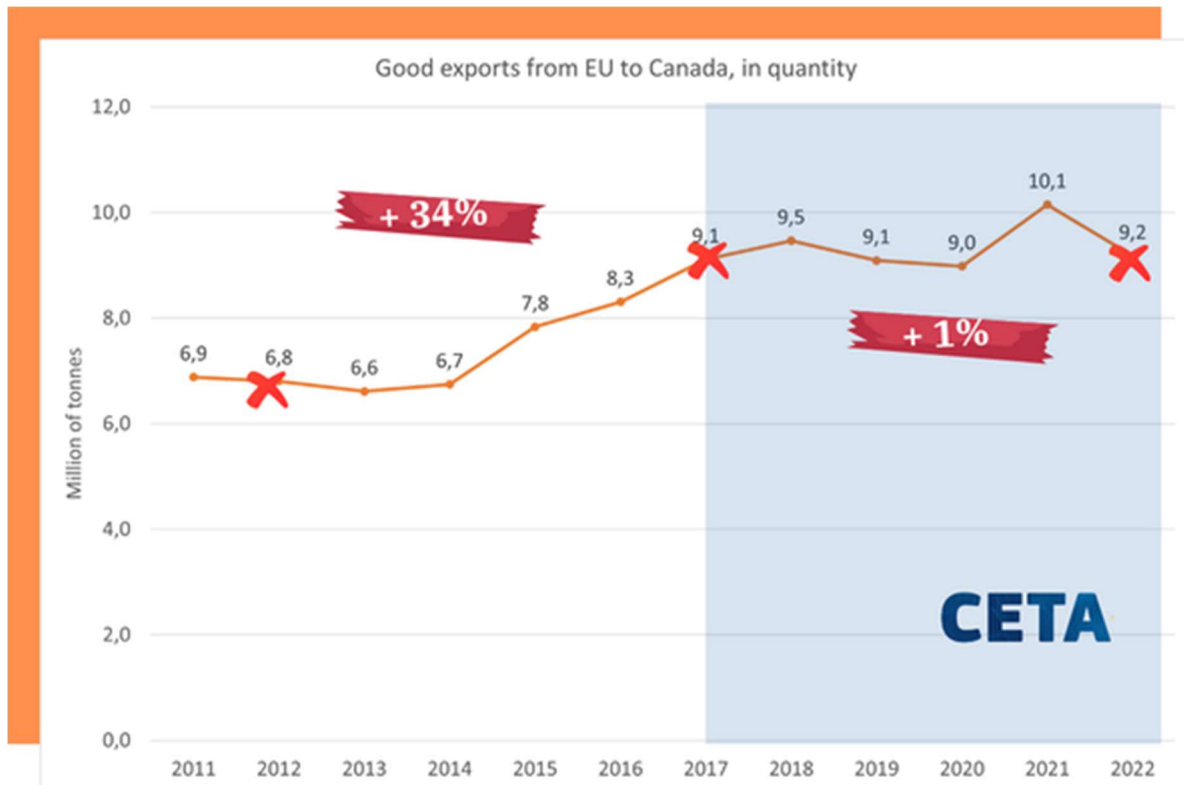
In its communication, the Commission highlights the increase in trade in goods generated by the provisional application of CETA:

“CETA has helped increase EU exports goods to Canada by 26%”

This increase is calculated on exports in monetary value between 2016 and 2020 without considering inflation. The same calculation, transposing these data into volume terms, gives an increase of 8% between 2016 and 2020 or even an **increase of just 0.7% between 2017 and 2022**. By way of comparison, **exports of goods increased by 34% in volume terms between 2012 and 2017, in the period preceding the provisional application of the agreement.**

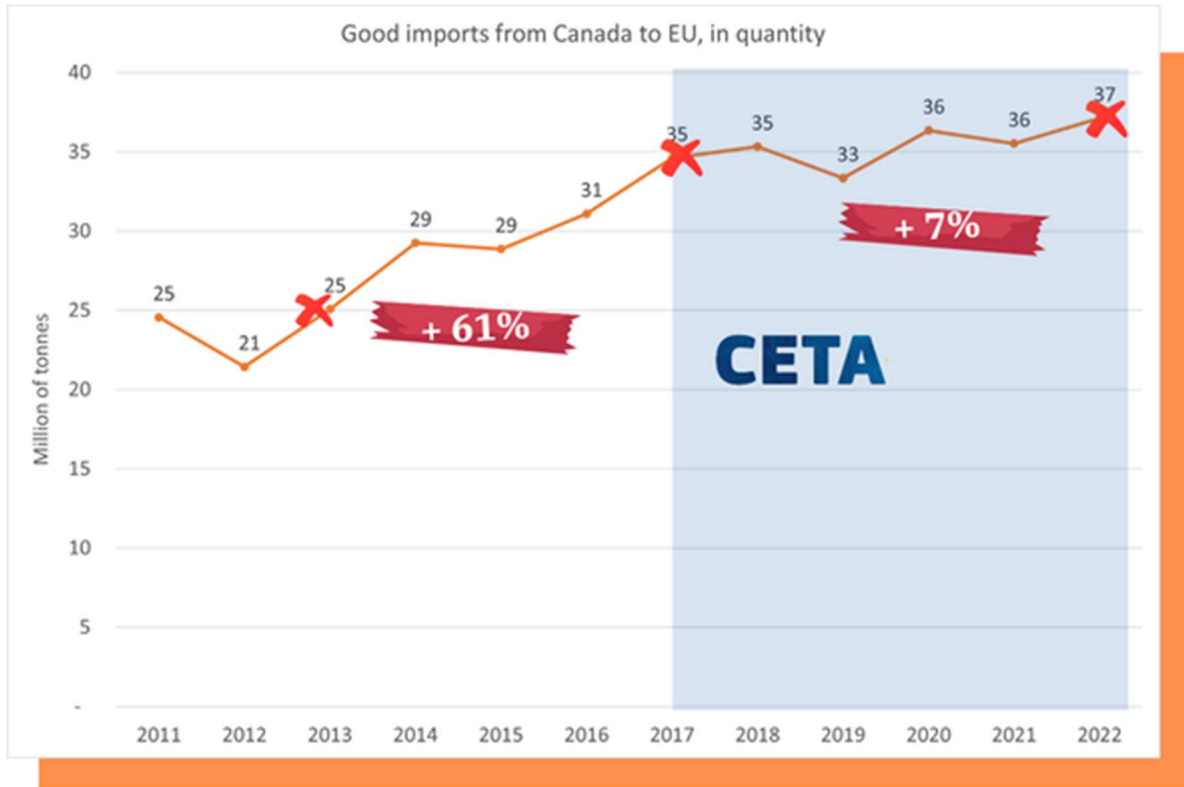
The marginal effect of the provisional application of the CETA since 2017 is, therefore, hardly perceptible.

Chart 2: EU goods exports to Canada, in volume (source Eurostat)



On the other hand, EU exports of goods to the rest of the world fell by 9% between 2017 and 2022, strengthening Canada's role as a trading partner compared with the average for other countries. But this trend does not date from CETA either, since between 2012 and 2017, EU exports to the rest of the world rose by just 1%.

Chart 3: Good imports from Canada to EU, in volume (source Eurostat)



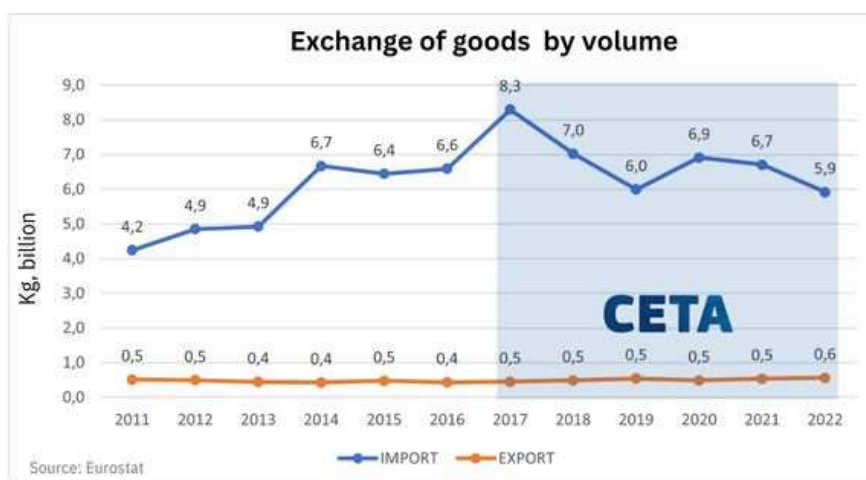
Moreover, CETA preference utilization was only 65.4% in 2021 for EU imports from Canada, and 59.5% for EU exports to Canada⁹.

Focus on trade in goods between France and Canada

The effects of the provisional application of the CETA's trade provisions on the flow of goods between France and Canada are also barely perceptible.

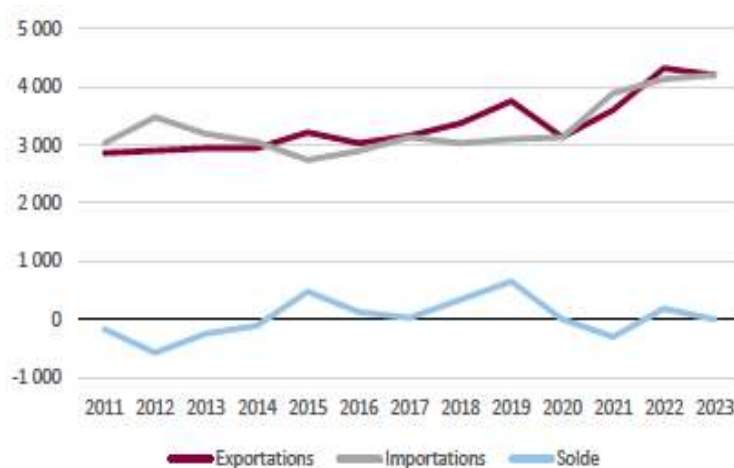
In volume terms, French exports remained stagnant, while imports fell.

Chart 4: Trade in goods between France and Canada by volume (source : Eurostat)



In value terms, flows have increased slightly, but the trade balance fluctuates around equilibrium (positive in 2018, 2018 and 2022, and negative in 2021).

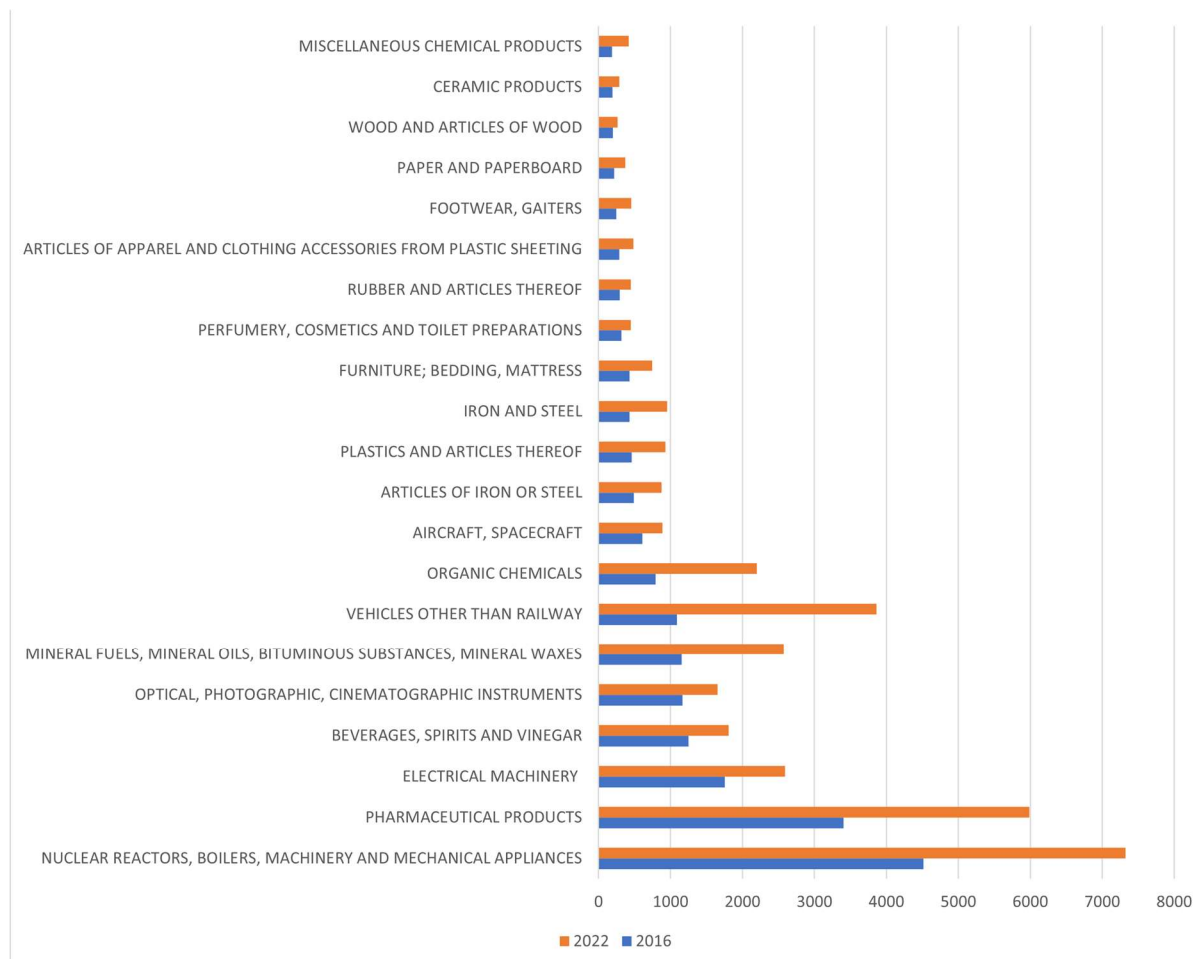
Chart 5: Trade in goods between France and Canada in value millions of euros (source: French customs, Asterès¹⁰)



2.1.2. Trends in business sectors

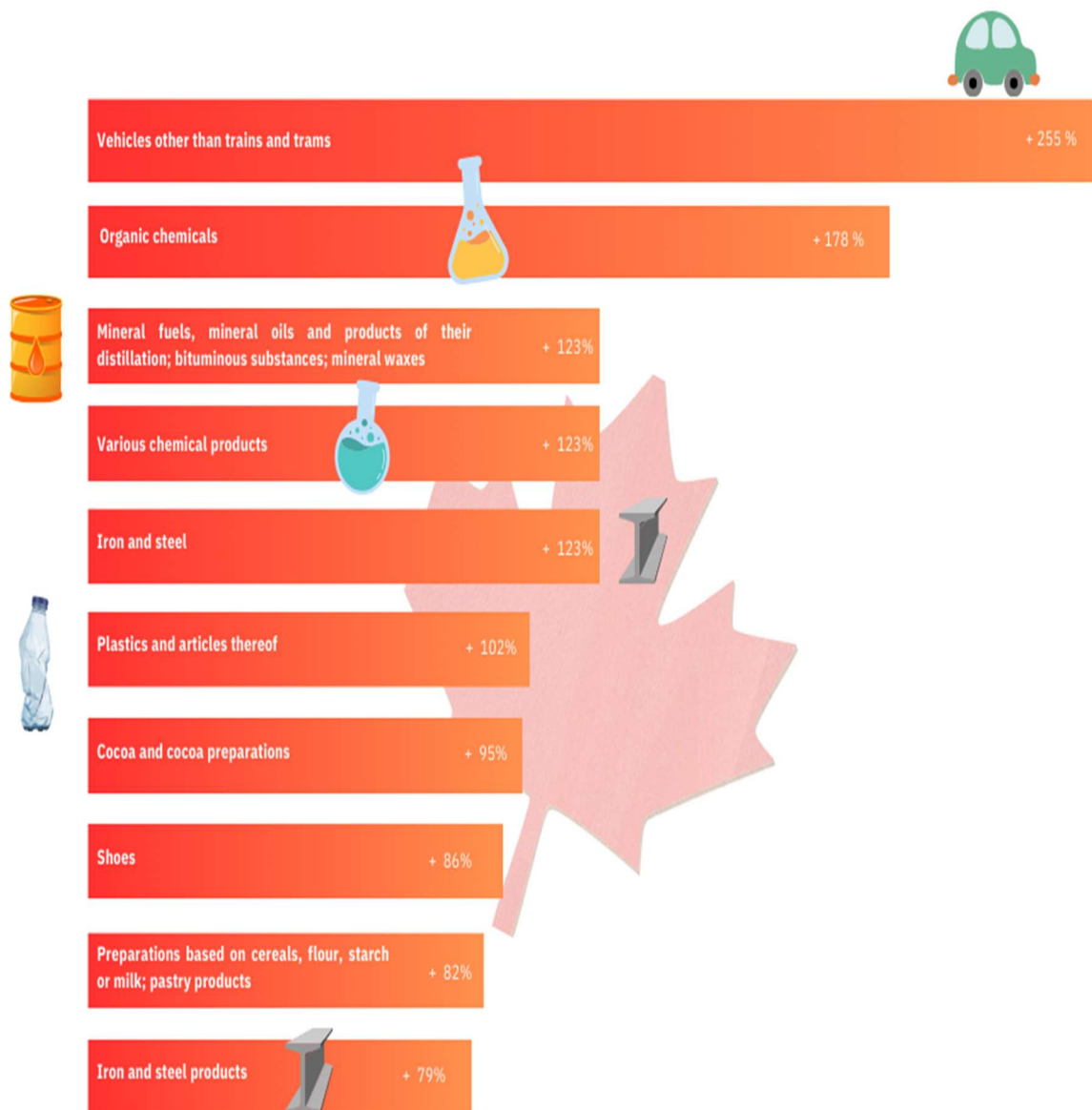
a. European exports of goods to Canada

Chart 6: Evolution of the 20 most important sectors out of 100 for EU exports to Canada, in million euros (source Eurostat)



This section focuses on the 20 most important sectors among European exports to Canada out of the 100 Eurostat sectors (selection based on the monetary value of flows in 2016).

Chart 7: Key sectors with the greatest growth since the provisional application of the CETA (between 2016 and 2022)



Source: Eurostat

Chart 8: The 11 most important EU export sectors to Canada in monetary value in 2022



Source: Eurostat

The lowering of tariff barriers and the various trade-facilitating provisions of CETA have contributed to the increase in such exports. But for specific sectors deemed sensitive, these reductions are gradual. Trucks, for example, were taxed at 6.1% before the provisional application of the CETA and will no longer be taxed at all from 2020. Car parts went from 6% to 0% following provisional application in 2017. Other exports have yet to see the last of their increases since the abolition of their tariff barriers was scheduled for 2022, notably for buses and vans, which were previously taxed at 6.1%. The elimination of tariff barriers on passenger vehicles (still at 6.1% for now) is scheduled for 2024.

b. European imports of goods from Canada

Chart 9: 20 first sectors of EU goods imports from Canada in monetary value - in euros (source Eurostat)

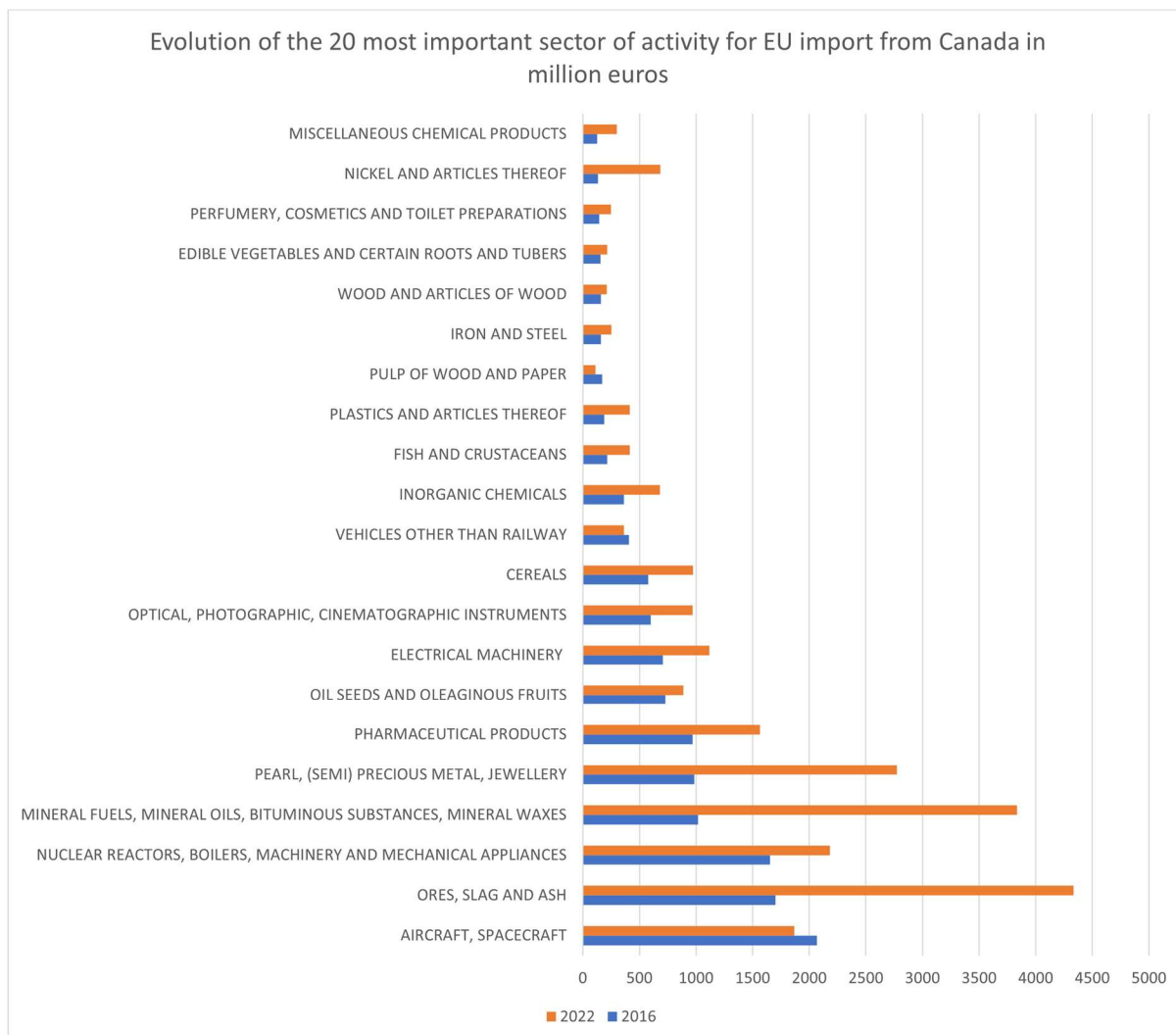


Chart 10: Goods import sectors showing the greatest evolution between 2016 and 2022



Source: Eurostat

Chart 11: top 10 import sectors from Canada to the EU in 2022



Source: Eurostat

With CETA, duty-free and quota-free access has been implemented for Canadian oil and gas products. In addition, Canadian service providers in the oil and gas sector benefit from the agreement's provisions on temporary entry and trade in services¹¹. In addition to the effect of lowering tariff barriers and various provisions of CETA facilitating trade, the international geopolitical context, notably Russia's invasion of Ukraine, has certainly also played a significant role in the increase of certain goods such as fossil fuels or fertilizers.

These results directly contradict the claim that CETA is a beneficial agreement for the environment¹².

The provisional implementation of the agreement - reduced customs duties coupled with trade facilitation measures - contributed to the increase of European imports of fossil fuels (including oil from tar sands), mineral, fertilizers, chemicals and plastics.

A closer look at some of Europe's leading export products

The European commission (EC) information sheets published in 2021 for each EU Member States highlight products whose exports have increased significantly since the provisional application of the CETA or whose markets have expanded considerably. The products cited include a whole range of goods that are polluting or emit high levels of greenhouse gases:

- vehicle engine production line / vehicle engine
- aluminium
- tyre
- instruments and devices for aeronautical or space navigation
- prefabricated building
- aircraft
- cruise ships and ferries
- sailboats and yachts, with or without auxiliary engines, for pleasure or sport
- prepared or preserved beef products
- trailers
- iron and steel
- tobacco
- rubber
- cement

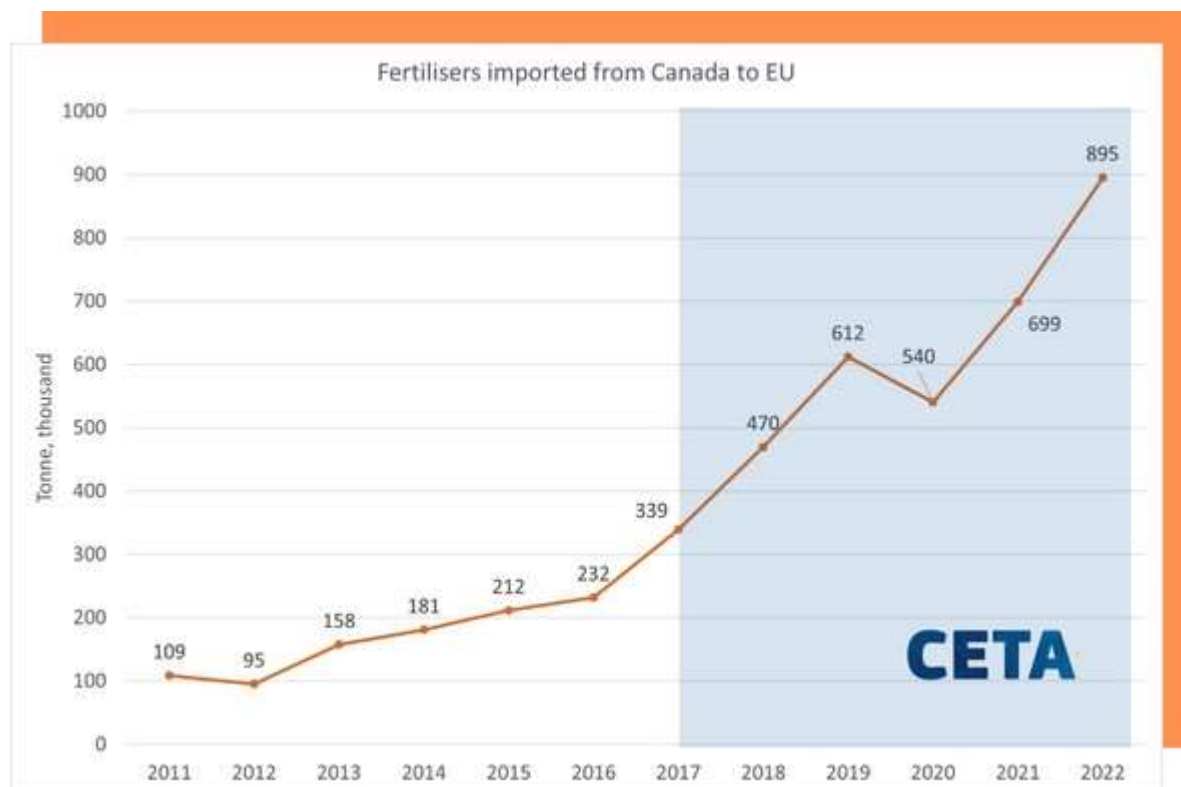
In addition, to show the success of exports, the EC is targeting a few products for each country, such as:

- Czech grand piano exports, which have increased by 334% in monetary value; on a per-unit basis, this gives an increase from around 9 to 35 Czech grand pianos between 2016 and 2021.
- Exports of German boats, which have increased by 263% in monetary terms; on a per-unit basis, this gives an increase of between 1 and 3 boats between 2016 and 2021 if we consider 40-tonne boats.
- Exports of Cypriot fire extinguishers, which have increased by 429% in monetary terms; on a per-unit basis, this gives an increase of between 600 and 33,500 extinguishers between 2016 and 2021.

2.1.3. Fertilisers

Fertiliser imports from Canada to the EU have risen sharply since the provisional implementation of CETA.

Chart 12: Fertilisers imports from Canada to EU in volume (source Eurostat)



2.1.4. Fossil fuels from oil sands

"Producing oil from tar sands is three to four times more emission-intensive, due to the extraction and complex water- and energy-intensive upgrading process required to produce a crude oil fluid enough for pipeline transports"¹³.

Despite their ecological impact, during the CETA negotiations, the EU decided not to penalise non-conventional fuels as part of the work on the Fuel Quality Directive (see section 4.5.3)¹⁴.

The share of oil from tar sands or products derived from tar sands among fuels imported from Canada to the EU has risen steadily since the provisional application of the CETA (share calculated based on quantities imported).

Chart 13: Petroleum oil obtained from bituminous mineral imported from Canada to EU (source Eurostat)

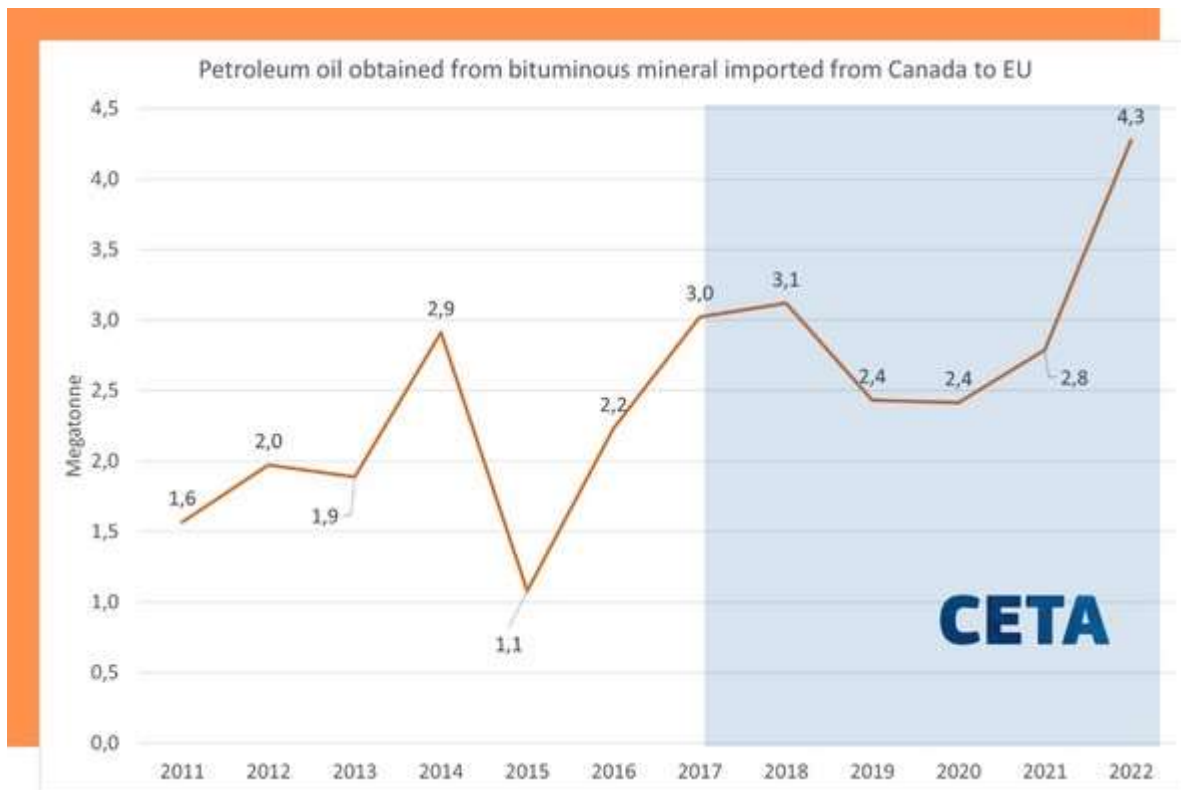
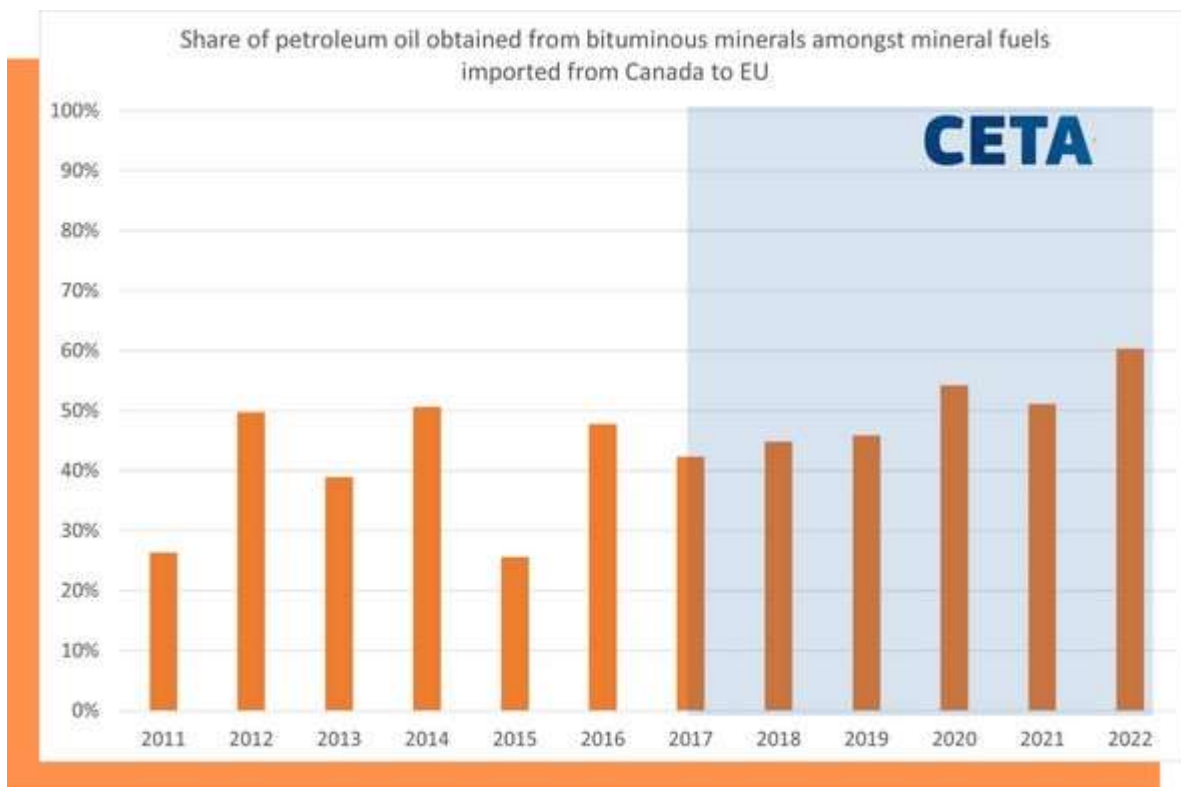


Chart 14: Share of petroleum oil obtained from bituminous minerals amongst mineral fuels imported from Canada to EU (source Eurostat)



The increase in energy imports from Canada to the EU since the provisional application of the CETA relates in particular to the increase in products from the oil sands.

2.1.5. Uranium

Uranium imports increased during the first few years of CETA's implementation before declining in 2020 in line with a more global trend (see graph below; the EU has imported much less uranium over the last 3 years).

Chart 15: Uranium imported from Canada to EU (source Eurostat)

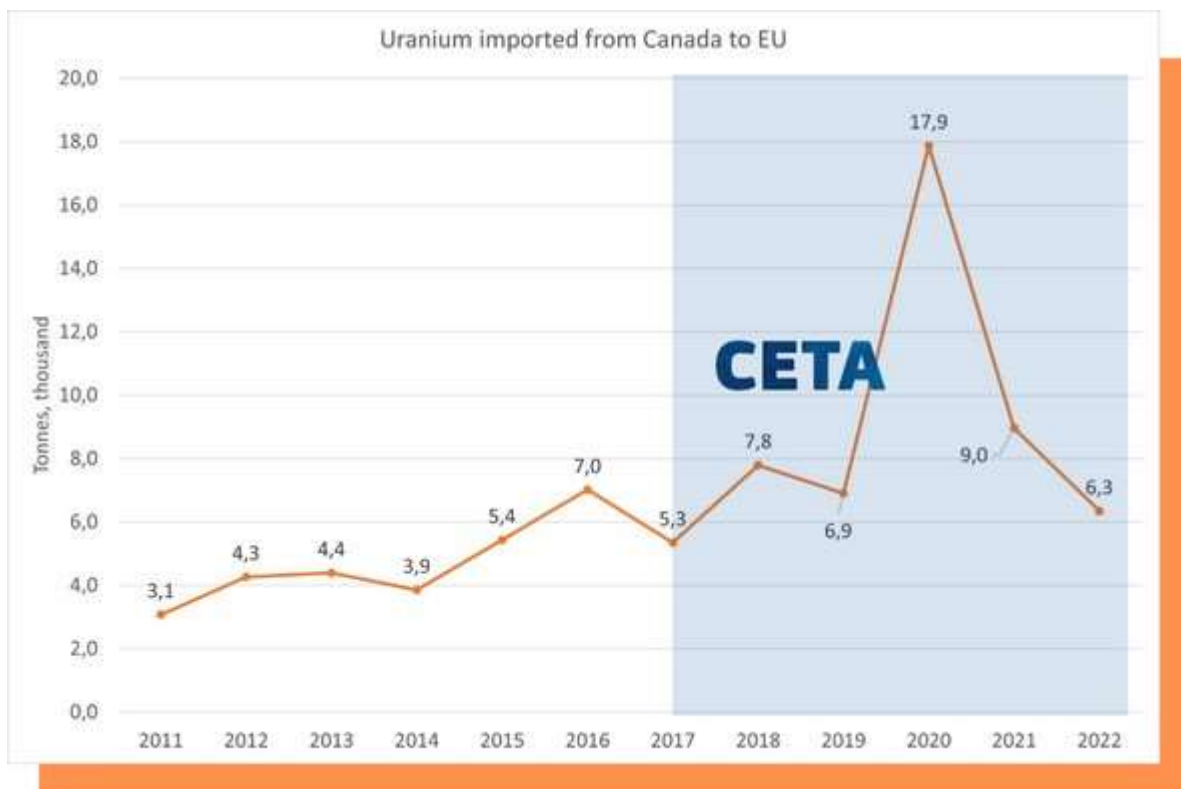
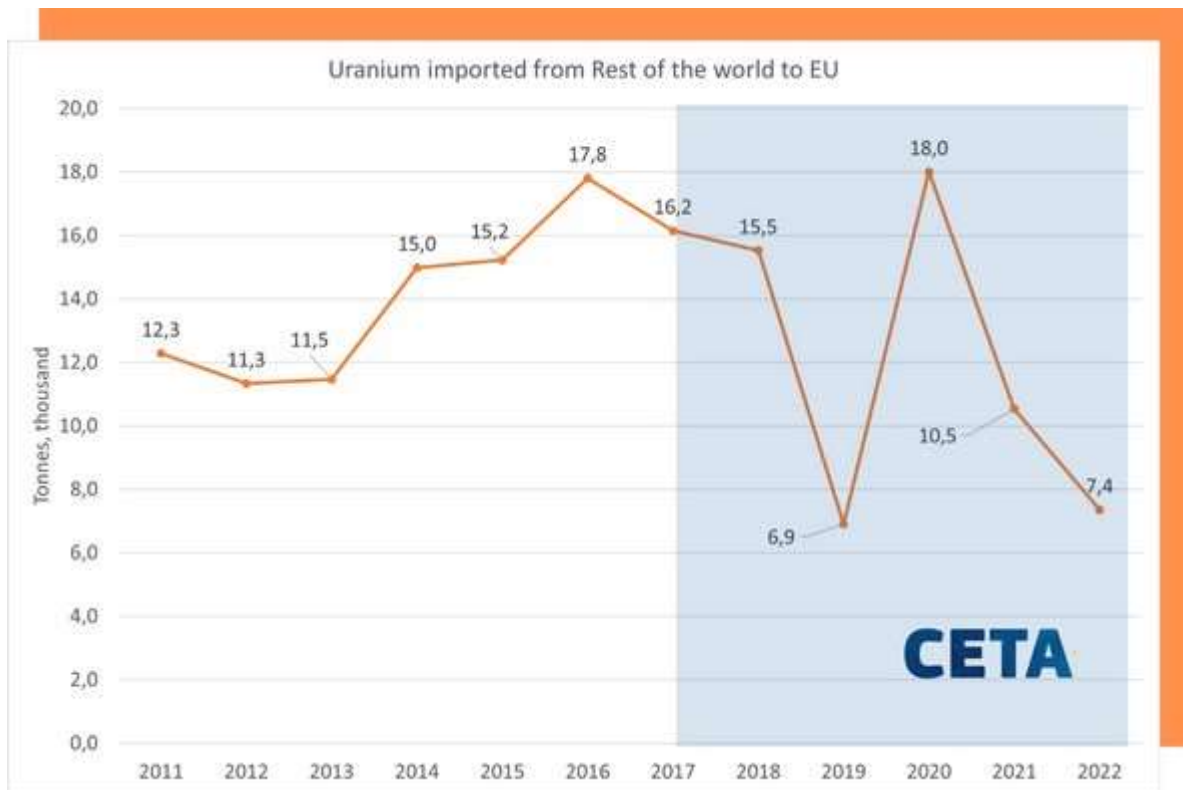
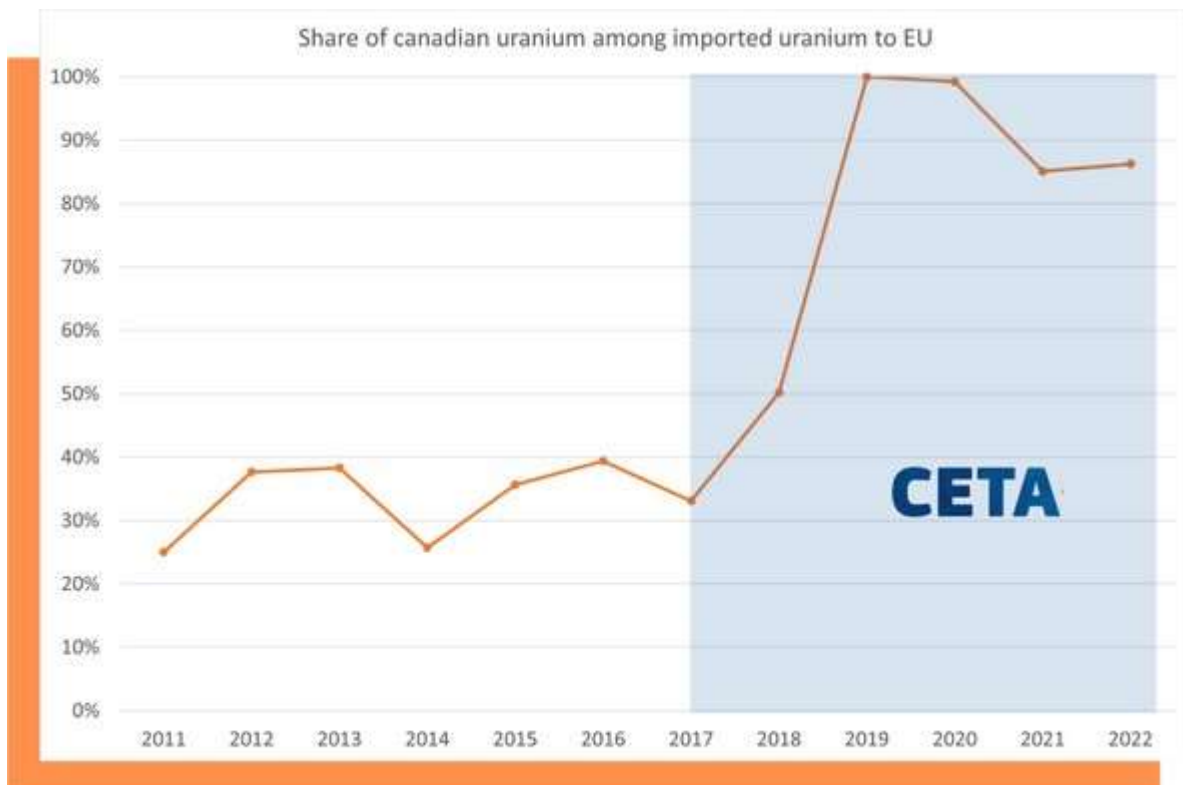


Chart 16: Uranium imported from rest of the world to EU (source Eurostat)



As a result, the share of imported Canadian uranium in total world uranium imports has increased overall since provisional application.

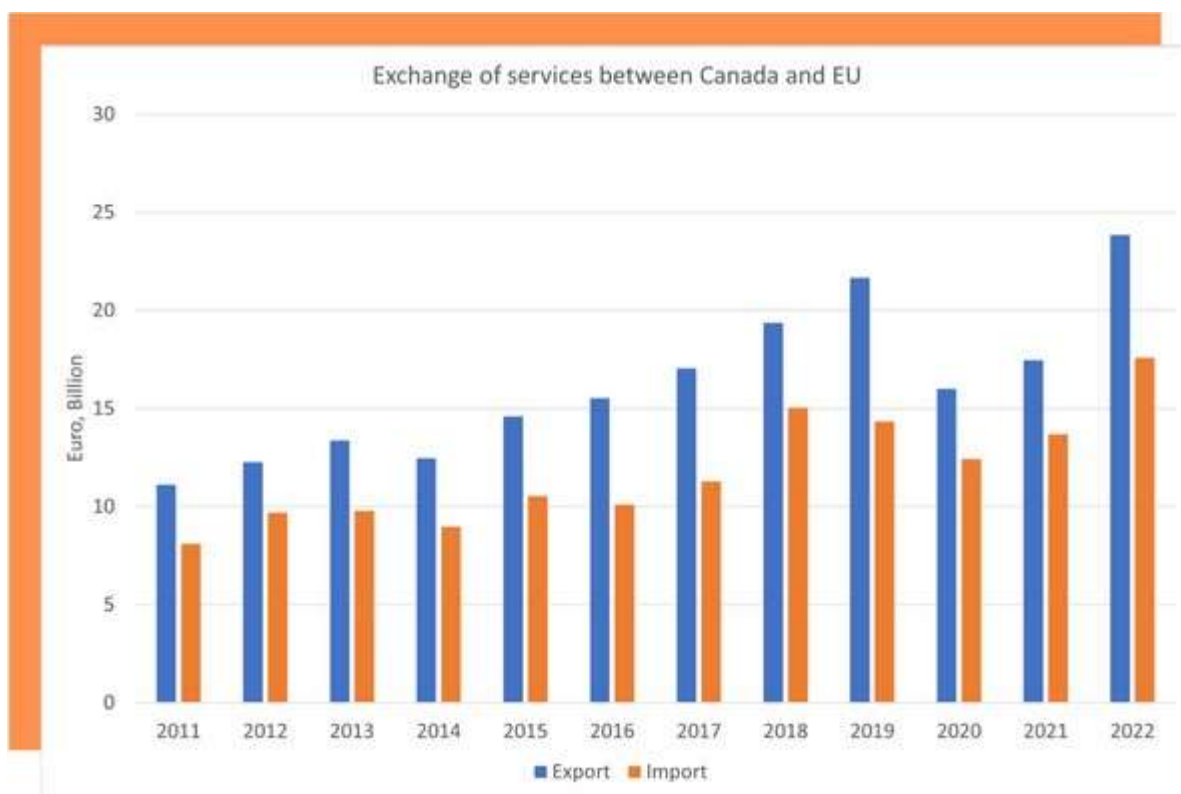
Chart 17: Share of Canadian uranium among imported uranium to EU (source Eurostat)



2.2. Trade of services

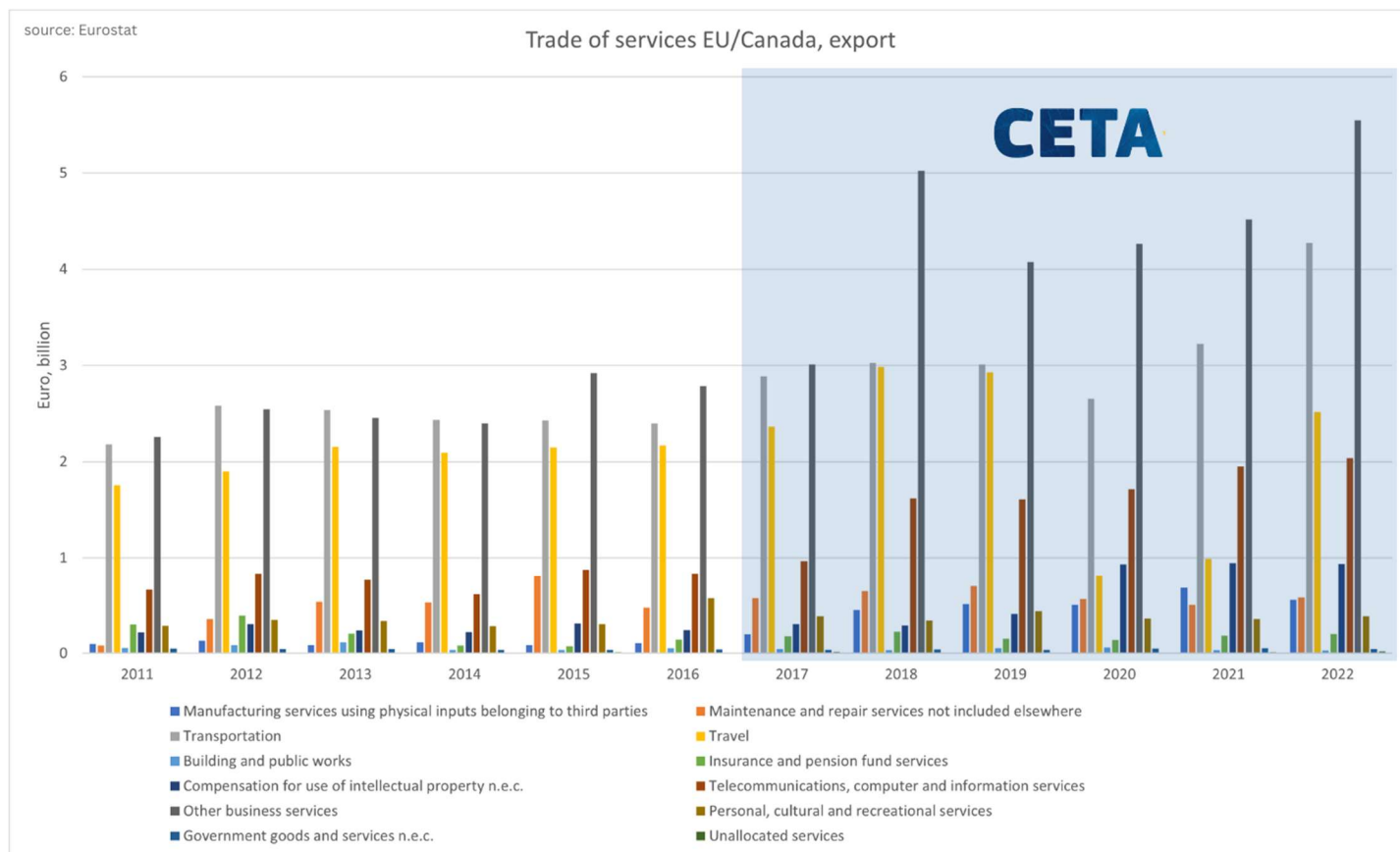
Trade in services has been growing since CETA came into force (excluding the contraction linked to the economic impact of the COVID pandemic), following a trend that began well before 2017.

Chart 18: exchange of services between Canada and EU (source Eurostat)



The sectors that contribute most to the exchange of services, and whose growth is most substantial, are the travel and transport sectors, both of which generate significant GHG emissions.

Chart 19: EU services exports to Canada (source Eurostat)

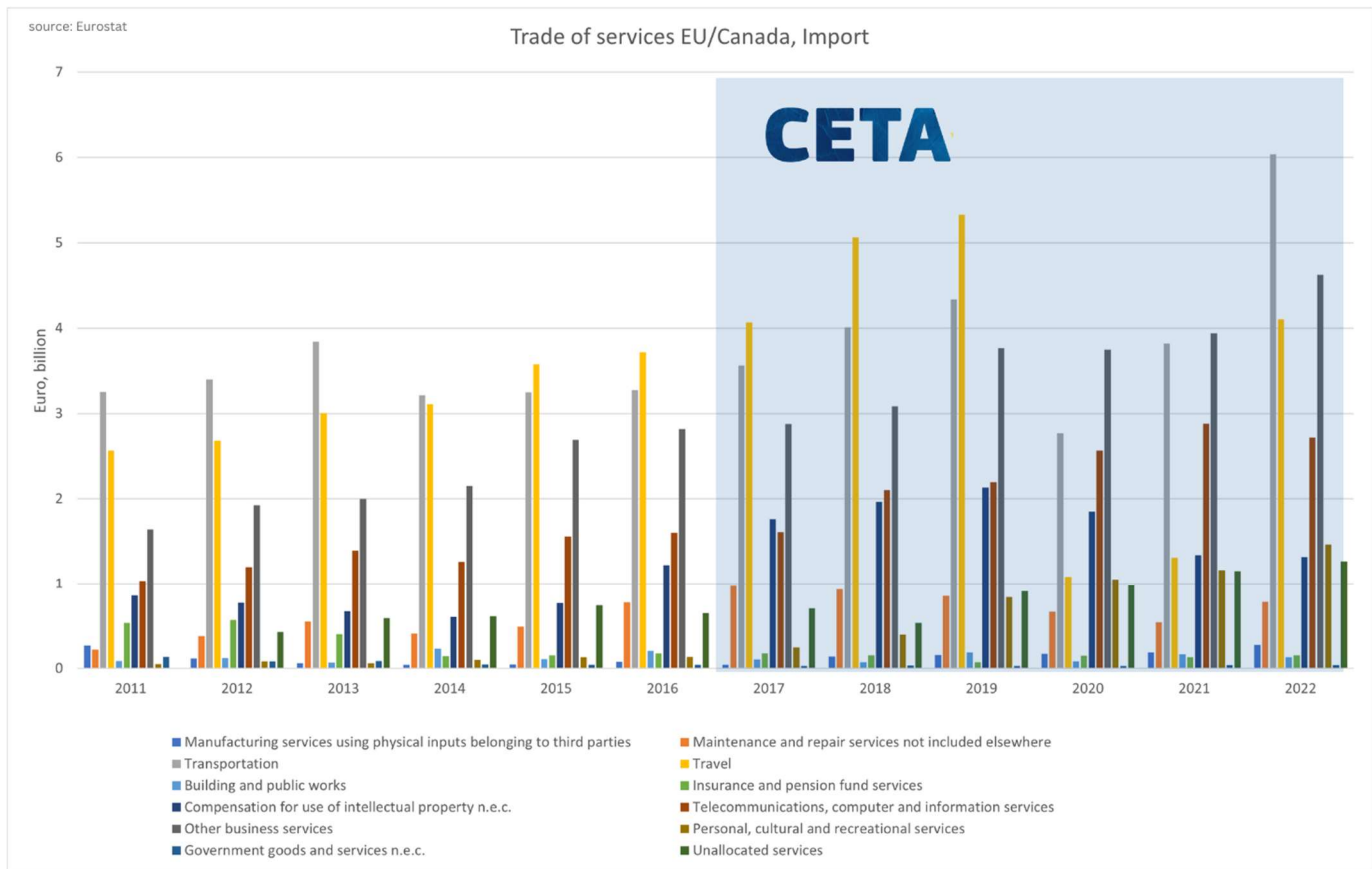


The "other business services"¹⁵ sector will increase from 2016 to 2022, but this increase has been constant since at least 2011, i.e., before the provisional application of CETA.

The travel and transport sectors bore a substantial impact due to the COVID-19 pandemic. Nevertheless, these sectors, which were prominent before CETA came into force, have grown even more since it was implemented (+84% for transport from 2016 to 2022, +10% for the travel sector from 2016 to 2022).

The transport sector, which remained relatively stable from 2011 to 2016, increased since the provisional implementation of CETA, albeit with a slight decrease due to the impact of COVID.

Chart 20: EU imports of services from Canada (source Eurostat)



3. Other economic impacts (employment, share of SMEs and investment)

3.1. Employment

One of the arguments put forward by CETA's promoters is the number of jobs generated or supported by such an agreement.

According to the European Commission's 2021 factsheet on the provisional implementation of the CETA and its spin-offs: "EU exports to Canada support 700,000 more than before CETA"¹⁶.

3.1.1. An inflated figure

This information comes from the « EU exports to the world : effects on employment »¹⁷ 2021 produced by DG Trade and the Commission's Joint Research Centre. While it contains a great deal of information on jobs in each EU Member State enabled/supported by exports (number of EU jobs supported by exports from each Member State, number of jobs in third countries supported by exports from each Member State, etc.), specific data on jobs supported by EU exports to Canada is not available.

To obtain an approximation of the number of export-related jobs in Canada, we have multiplied the number of export-related jobs for each country by the share of exports with Canada in total extra-EU exports, the latter being in monetary terms.

The total result for the EU27 would be just under 500,000 jobs supported by EU/Canada exports in 2019 (the most recent year), 200,000 less than the figure announced by the Commission.

3.1.2. Absence of real data on the job content of exports in 2019

Furthermore, it is indicated in the notes to this report that while data on jobs supported by exports is available for the years 2000 to 2019, information on the employment content of exports is not in fact available beyond the year 2014¹⁸. The result shown is, therefore, based on estimates using the ratio for 2014.

"For the year 2019, given the absence of the corresponding WIOD tables, the results are all projections based on the estimations of 2014, so they should be taken with caution. These projections have been elaborated by the JRC using international trade in goods and services statistics (Eurostat) of 2019 and assuming the same number of jobs embodied in every million EUR worth of exports to the world as in 2014, different per exporting country and per country where the employment is located."

These results are, therefore, of little relevance in demonstrating the effects of the provisional application of the CETA from 2017, in the words of DG Trade itself:

“Finally yet importantly, the reader should be aware that these projections do not reflect the changes in labour productivity, technology, goods and services export composition and intra-EU trade structures occurred between 2014 and 2019. Besides, sector, skill, age and gender shares are those of 2014 due to the absence of data availability.”¹⁹

3.1.3. Hazardous communication of the figures from the country factsheets

The EC has also published country-by-country reports on the implementation of the CETA in which, it highlights the number of jobs in the country supported by exports.



However, these data do not relate to Canada in particular, but relate to non-EU exports in general.

Estonia

EXPORTS MEAN JOBS

**Estonian companies' exports outside the EU are worth €7 billion in 2019.
And this keeps 169 thousand Estonian workers busy...**

- Estonian extra-EU exports support **138 thousand** jobs in Estonia.
- Another **31 thousand** Estonian workers are in jobs linked to exports from other EU countries to the world.
- This means **26% of jobs** in Estonia depend on extra-EU exports.
- Estonian extra-EU exports also support over **30 thousand** jobs in EU countries.
- Exports create **opportunities for everyone**.



In Estonia, most people in export-related jobs are **medium-skilled** workers.

3.1.4. More moderate data according to Eurostat

On Eurostat, a FIGARO database (JRC & Eurostat) gives the share of employment supported by EU exports from 2011 to 2020. A comparison of the two databases for 2014 and 2019 shows lower proportions for all Member States, particularly for tax havens (Ireland, Luxembourg, the Netherlands, etc.).

Chart 21: Share of employment in EU MS supported by EU exports from 2 different sources for 2019

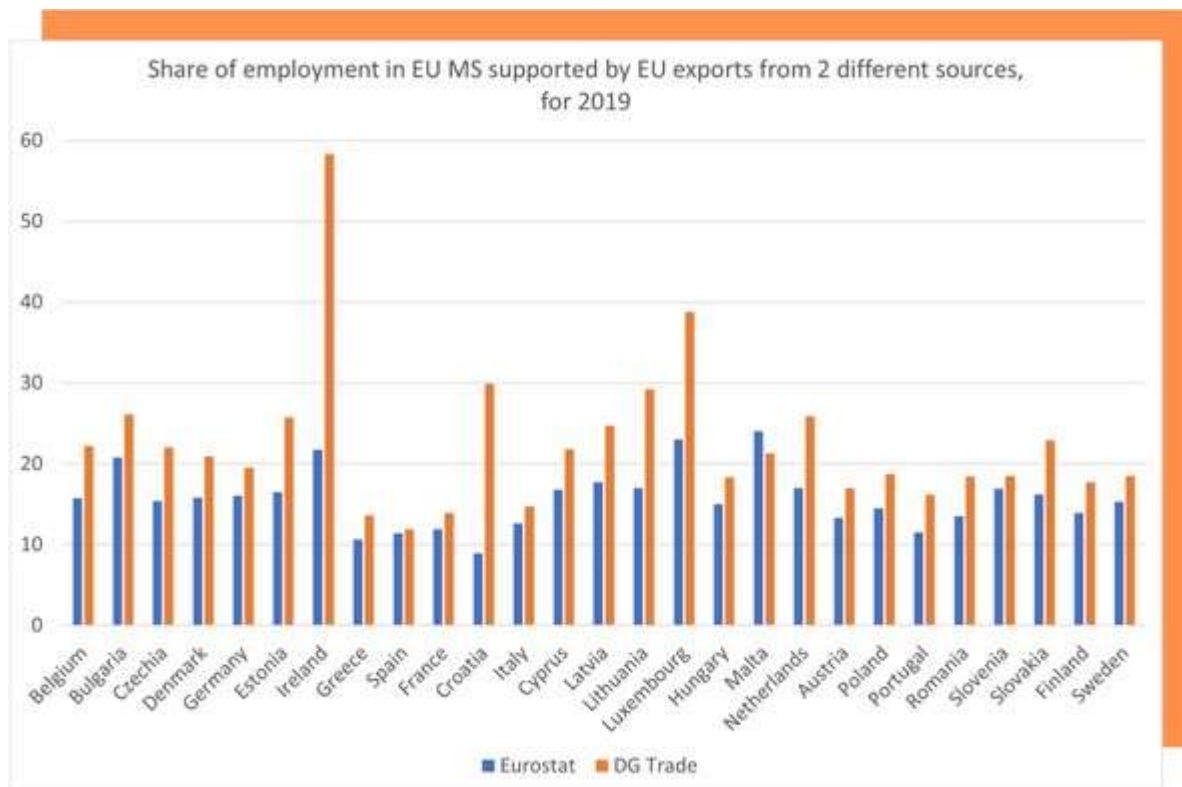
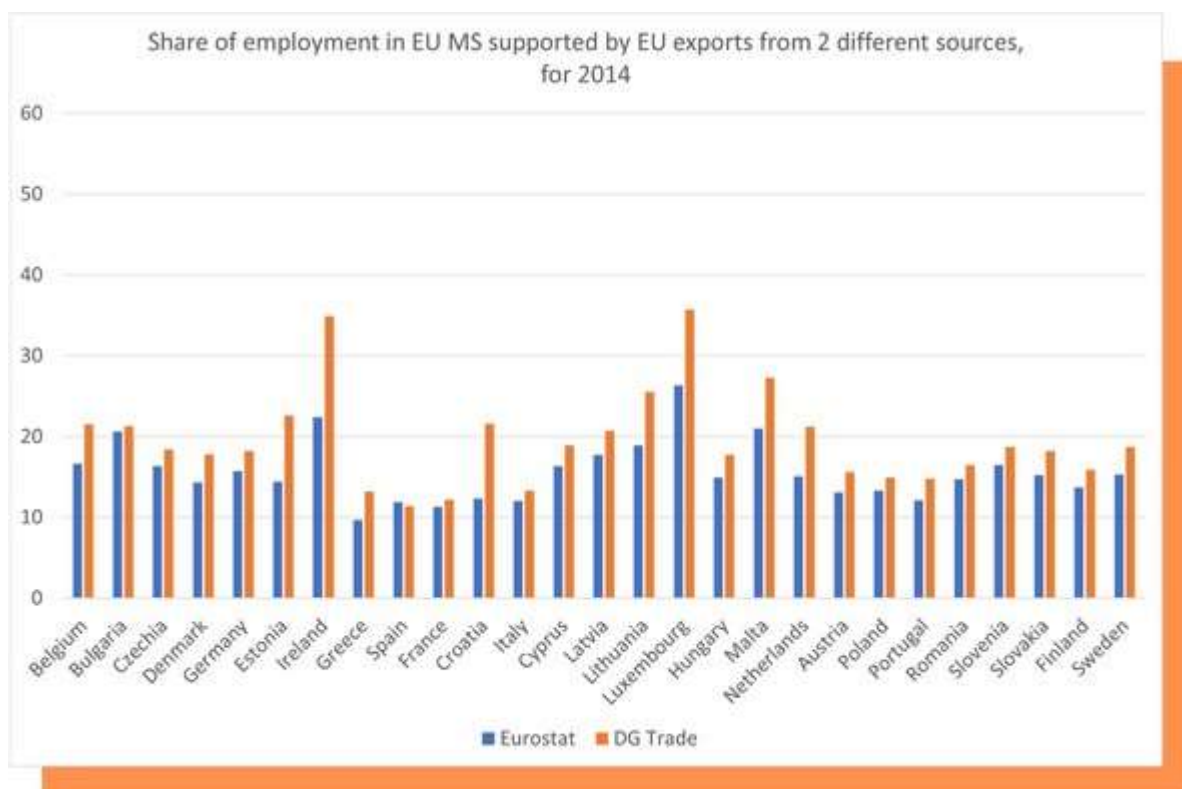


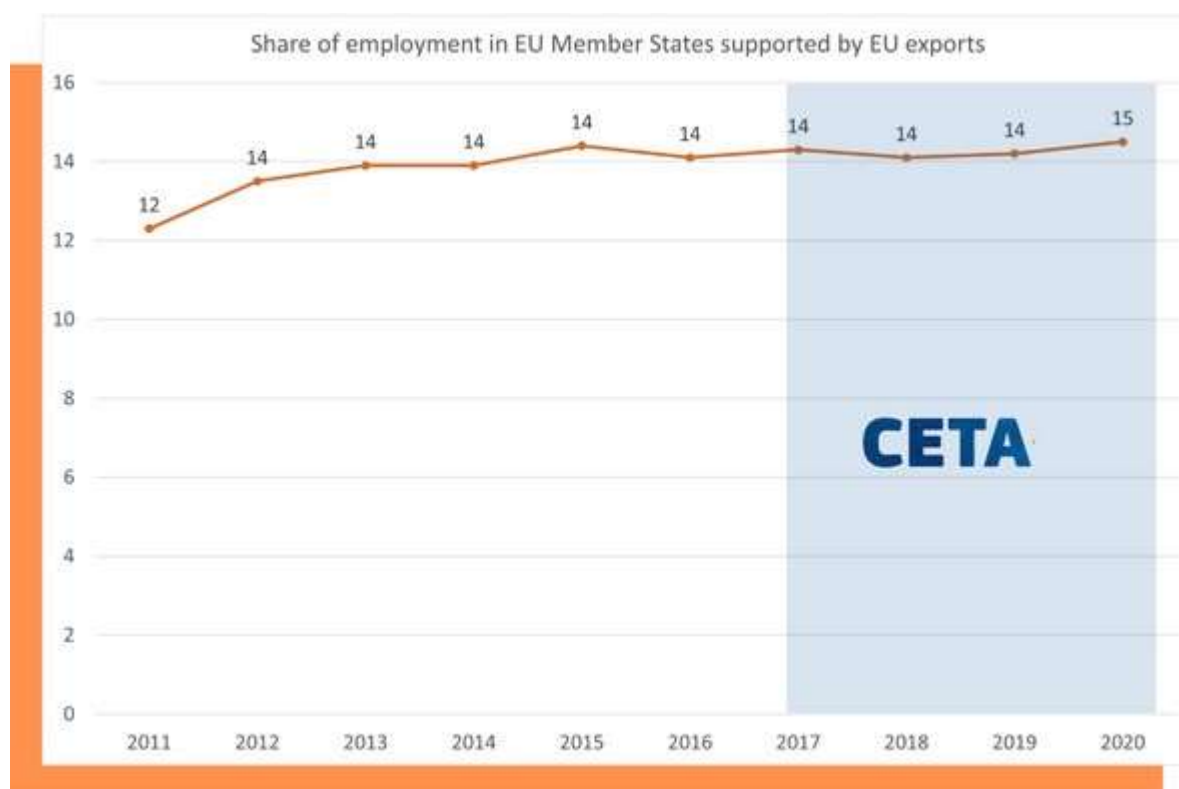
Chart 22: Share of employment in EU MS supported by EU exports from 2 different sources, for 2014



On average, for 2019, the figures given by the DG Trade report are 44% higher than those given by FIGARO, the Eurostat database.

Eurostat data shows that the share of jobs linked to exports to Canada among all jobs in the European Union is stable overall and has changed very little since CETA was set up.

Chart 23: Share of employment in EU Member States supported by EU exports (source Eurostat)



3.2. SMEs

Another argument presented during the negotiations for the ratification of CETA and since its provisional application is that this agreement would benefit small and medium-sized enterprises (SMEs)²¹.

The general factsheet on CETA published by the EC reports a 44% increase in European SMEs exporting to Canada since provisional application. This increase reflects a change in the number of exporting companies in general.

- **The share of SMEs among the number of European companies exporting from the EU to Canada is stable overall from 2014 to 2021** (varying between 85% and 87%, with a low point of 82% in 2015), as is the monetary share of SMEs among European companies exporting from the EU to Canada (from 38% in 2014, 28% in 2016 to 31% in 2021).
- **The share of SMEs among European companies importing from Canada is falling**, from 79% in 2016 to 57% in 2021, as is the monetary share of SMEs among European companies importing from Canada, from 31% in 2016 to 24% in 2021.

Chart 24: Share of small and medium sized enterprises exporting to Canada (source Eurostat)

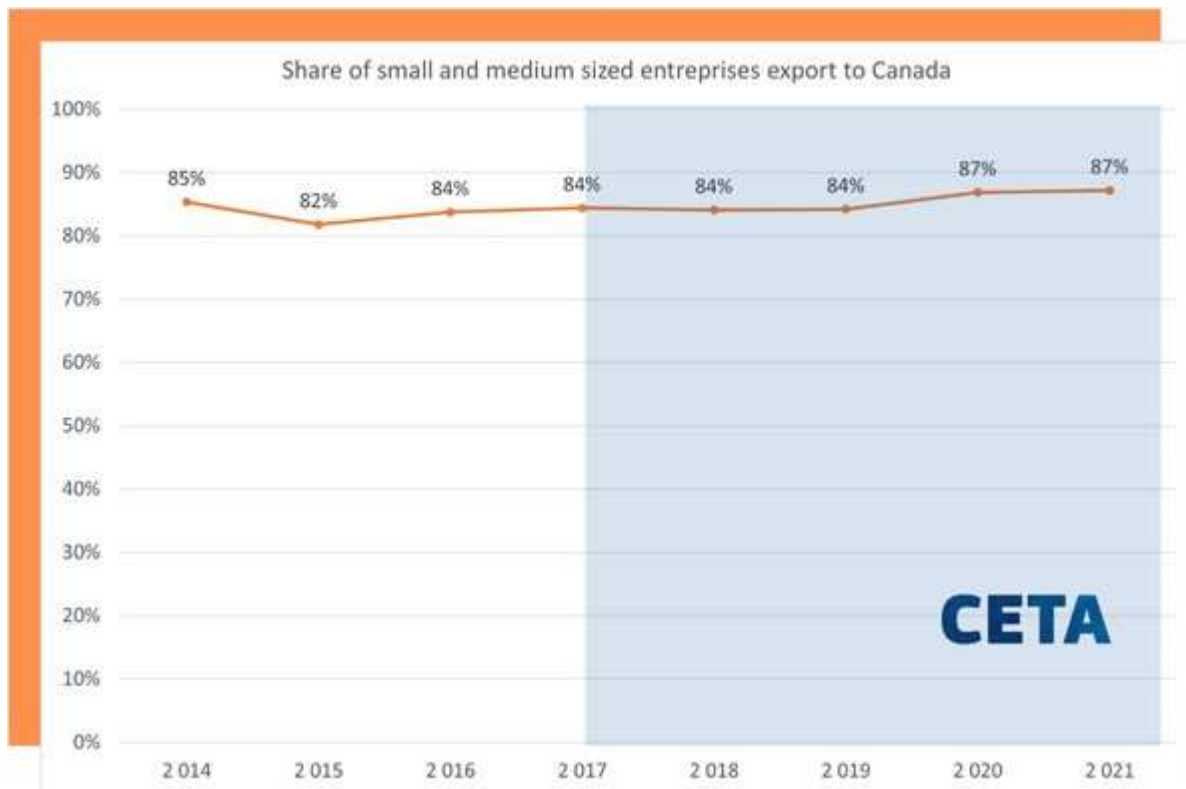


Chart 25: Share of small and medium sized enterprises importing from Canada (source Eurostat)

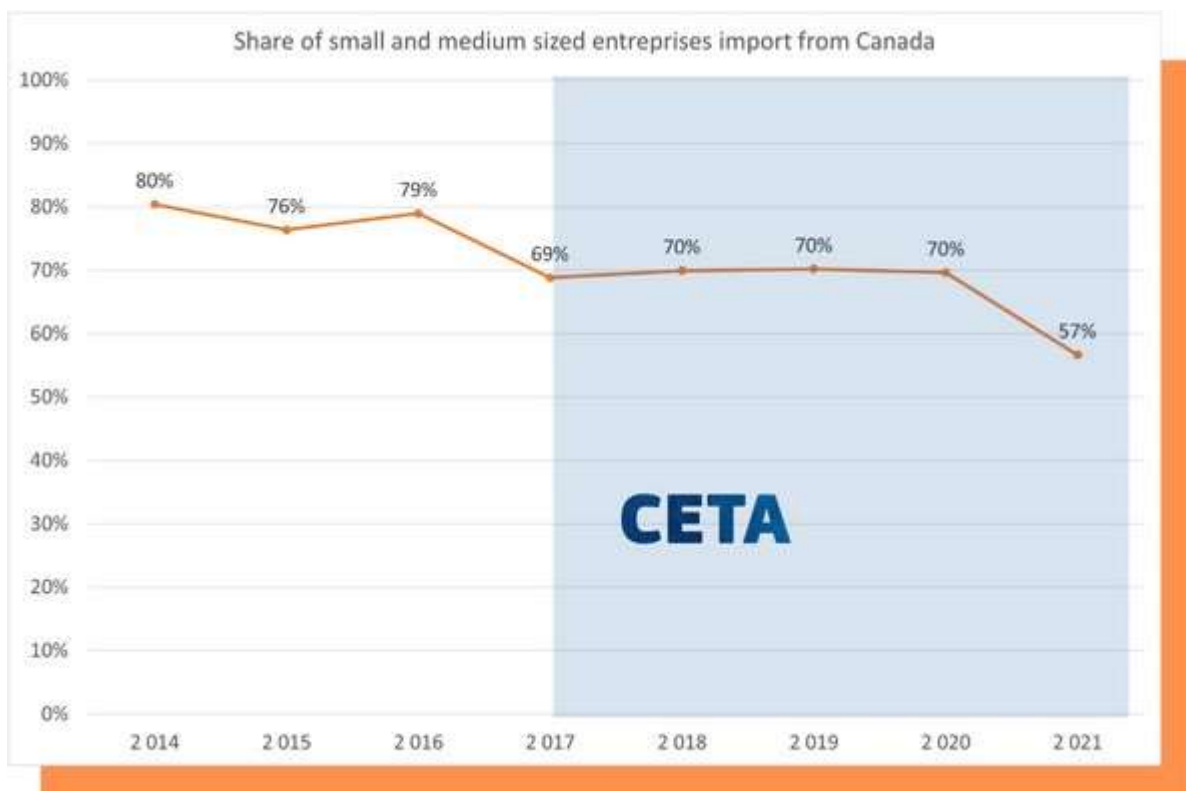


Chart 26: Share of small and medium sized enterprises exports to Canada in monetary value (source Eurostat)

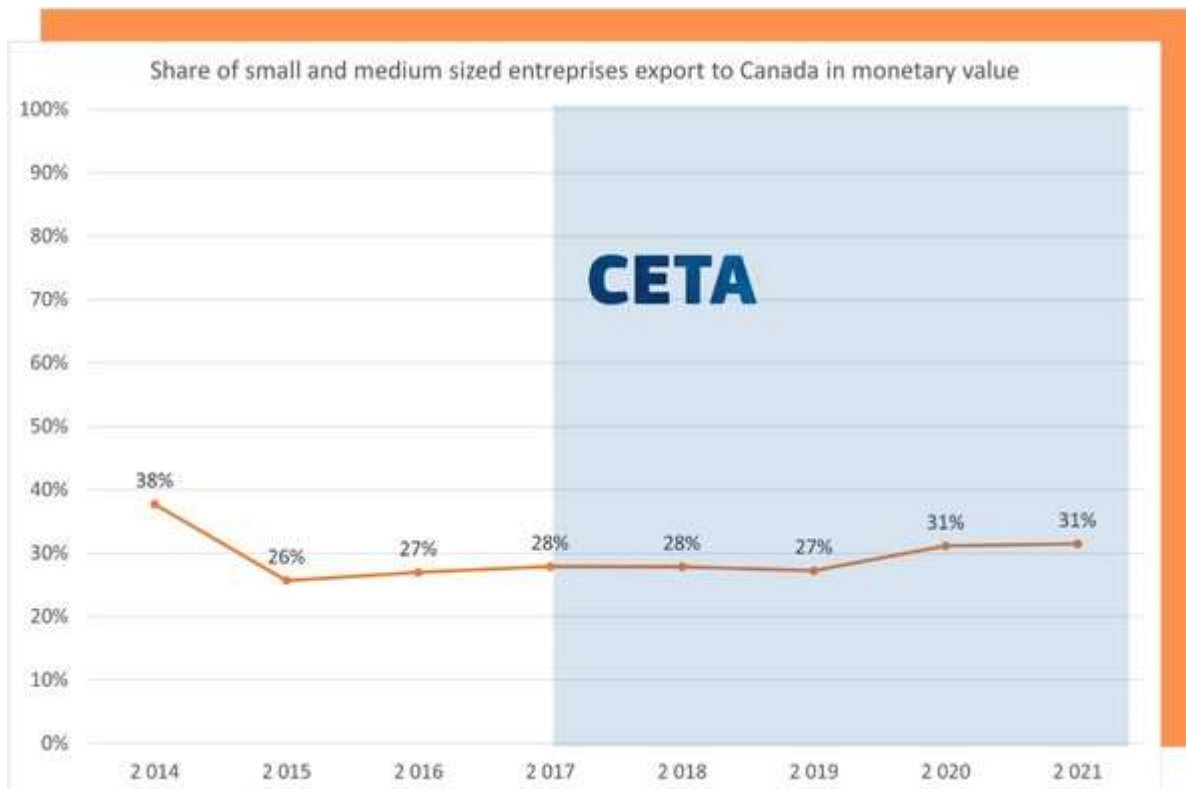
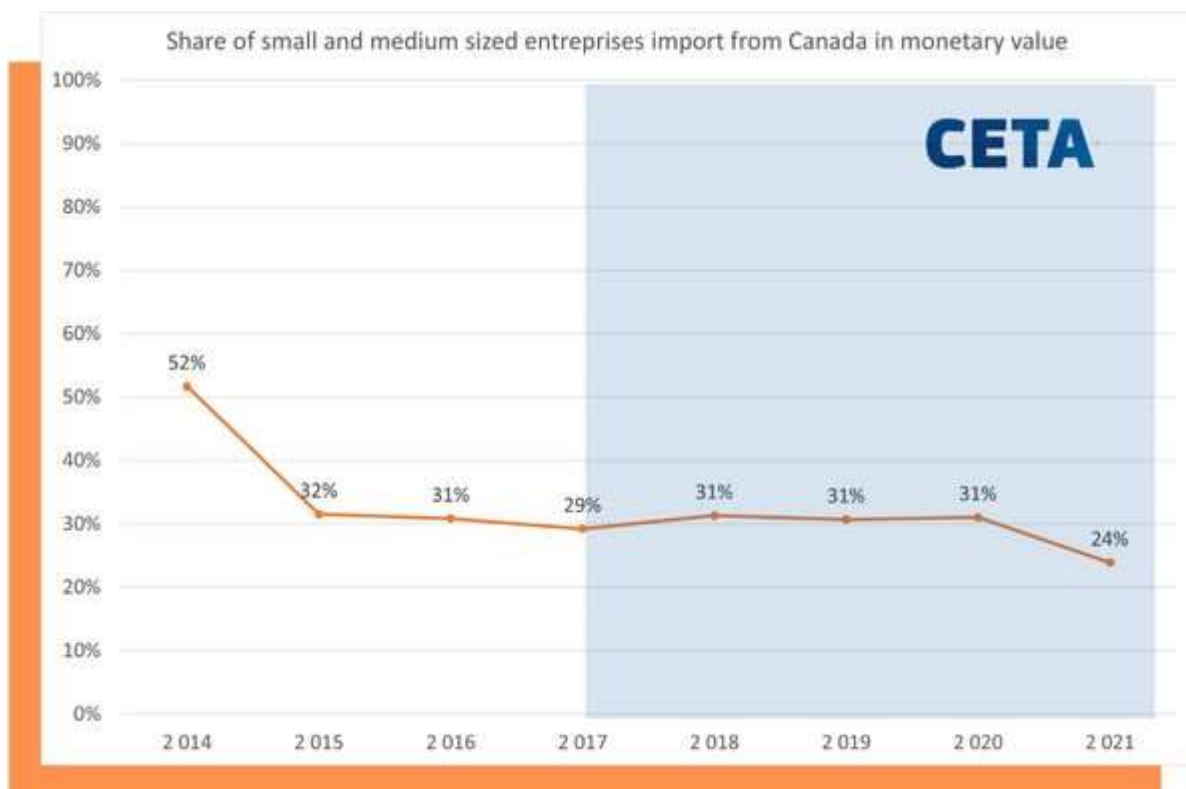


Chart 27: Share of small and medium sized enterprises import from Canada in monetary value (source Eurostat)



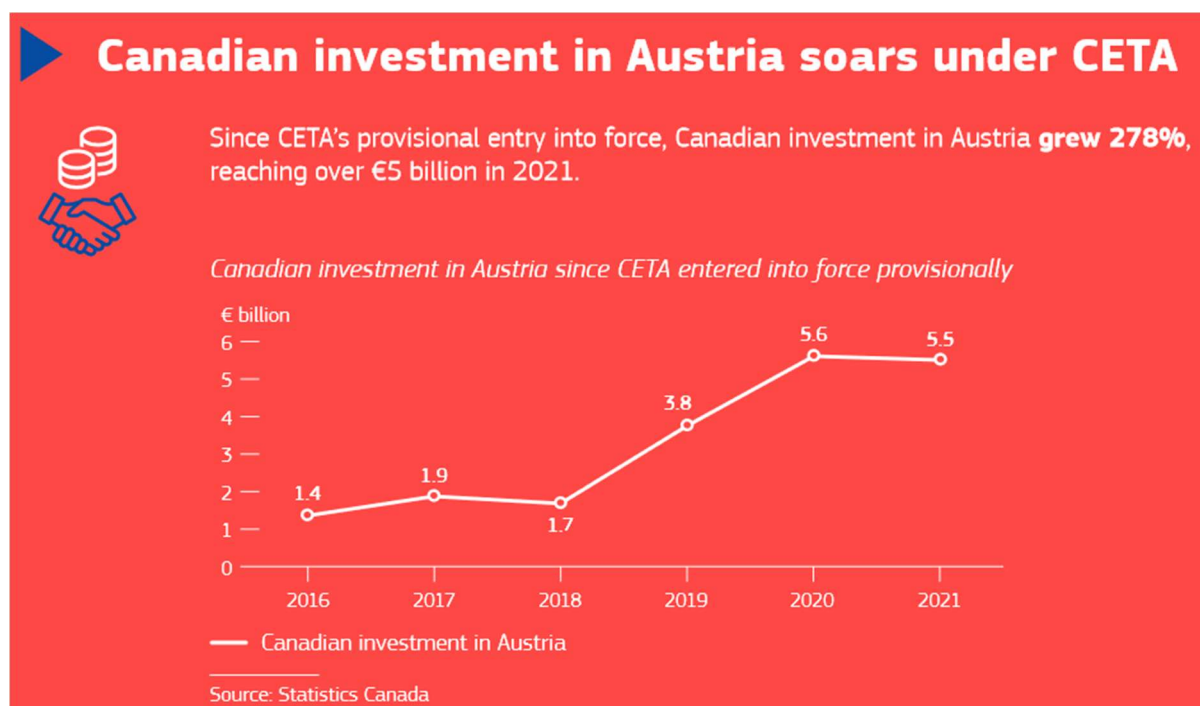
CETA therefore has no marked effect on European SMEs exporting to Canada.

3.3. Investments

Unlike those on trade, the CETA's provisions on investment protection are not affected by the provisional application of 2017. Specific investment facilitation clauses, such as the abolition of specific market access rules (Article 8.4) and the prohibition on prescribing results (8.5)²², already apply.

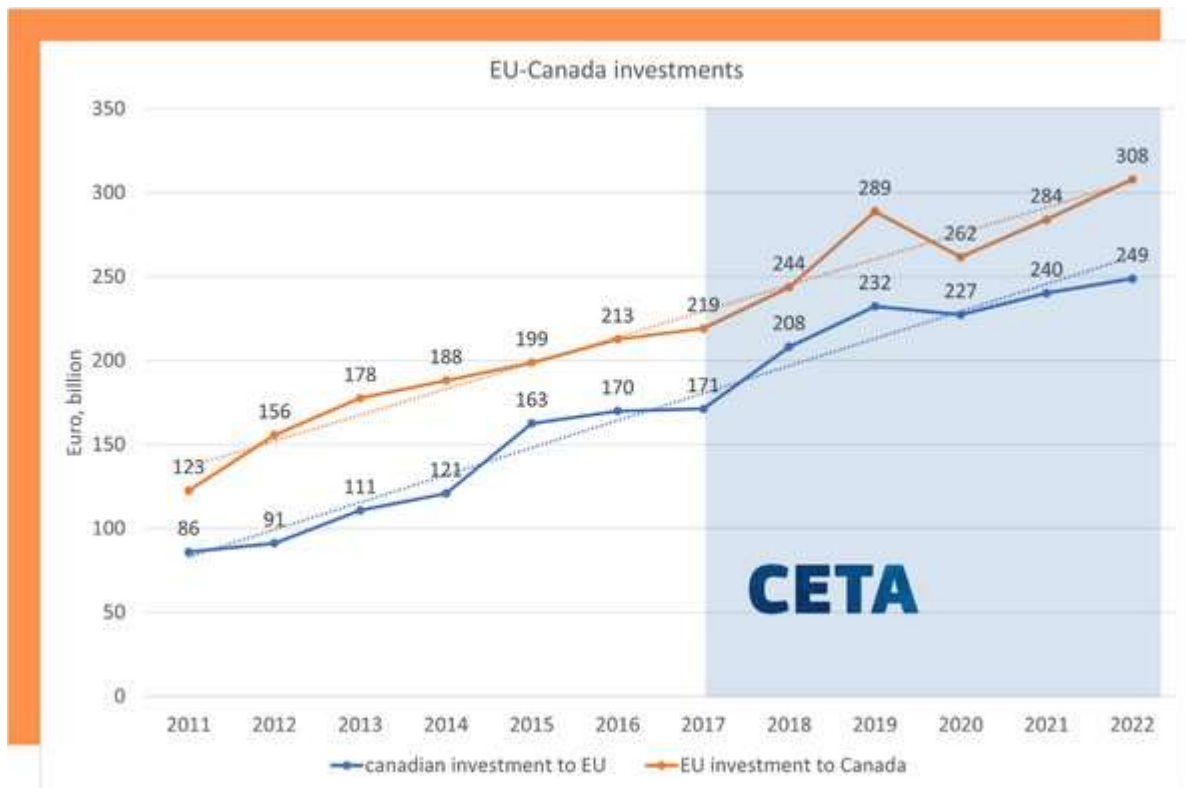
Nonetheless, the EC is still boasting about the increase in investment, particularly in the factsheets produced for each member country.

There are 27 such presentations:



General data shows that the increase in investment is constant, linear and predates CETA. Any effect of the provisional application of the text is therefore difficult to identify.

Chart 28: EU-Canada investments (source Statistics Canada)



4. An agreement already obsolete before its final ratification

4.1. Warnings from the Schubert Commission

On 7 September 2017, the Schubert Commission (a multidisciplinary group of independent experts commissioned by the French Government in July 2017) submitted a report on *"The impact of the Comprehensive Economic and Trade Agreement between the European Union and Canada (CETA) on the environment, climate and health"* to Prime Minister, Edouard Philippe²³.

The commission confirms several risks identified by civil society.

4.1.1. Climate not taken into account

The Schubert Commission deplored the fact that climate issues had not been taken into account in the design of the agreement, either in the tariffs section or in the sustainable development chapter:

"The most notable absence from the agreement concerns climate change."
[p7]

"CETA, which was signed before COP21 and the Paris Agreement, does not make any explicit reference to climate change. It is indirectly acknowledged, and the Paris Agreement is mentioned in the Joint Interpretative instrument."
[p50]

"Chapter 22 "Trade and sustainable development" does not refer to the climate in detail." [p50]

"Nothing has been done to limit the trade in fossil fuels and the rise in CO2 emissions caused by increased shipping and aviation traffic induced by the increased trade flows." [p7]

"There is a risk that a regulatory measure designed to combat climate change to be considered as a barrier to trade and that the arbitration procedures result in demands for compensation." [p52]

In this regard, the 26 September 2018 recommendation of the CETA Joint Committee on Trade, Climate Action and the Paris Agreement only reiterated the commitments made by the EU and Canada and does not include sanctions in the event of a breach. And the two-year work programme of the Sustainable Development Committee to implement the recommendation remains fairly limited, focusing as it does on cooperation activities and exchanges of experience.

4.1.2. Lack of effective recognition of the precautionary principle

In addition to the lack of precise and binding commitments on environmental and climate protection in CETA, the Schubert Commission also deplored the lack of effective recognition of the precautionary principle.

This precautionary principle "aims to ensure a high level of environmental protection by taking preventive decisions in the event of risk"²⁴ and allows political decisions to be taken in the absence of formal proof, in this case concerning a given product, but in the presence of sufficiently high risks to health or the environment. This principle is an integral part of the European Union, and is mentioned in Article 191 of the Treaty on the Functioning of the European Union.

However, compliance with this principle is not guaranteed in CETA, as the Schubert Commission's analysis of the text of the Agreement shows:

"It is regrettable that CETA does not expressly refer to it" [p18]

"However, the absence of an explicit reference to this term in the text of the agreement raises uncertainty about the possibility of a dispute with Canada with respect to future legislation." [p6]

"The approach to precaution adopted in the SPS agreement is thus closely linked to the scientific demonstration of risk. Furthermore, it only allows the adoption of temporary measures". [p21]

The Schubert Commission highlighted the dangers of regulatory cooperation and the risk of standards weakening, particularly in agriculture.

"CETA therefore questions, indirectly and implicitly, the future of governance based on precaution across diverse public policy actions in Europe." [p22]

"CETA's vagueness means that we cannot exclude the arrival on the European market of products approved under regulations which do not take into account the precautionary principle". [p22]

4.2. French action plan

Following the submission of the Schubert report, on 25 October 2017 the French government published an action plan led by the Ministry of Europe and Foreign Affairs, the Ministry of Ecological Transition and Solidarity, the Ministry of Economy and Finance and the Ministry of Agriculture and Food²⁵.

This plan of 65 measures was divided into 3 pillars aimed at

1. Ensuring "exemplary implementation of the CETA".
2. At the same time, take initiatives to "raise the bar on environmental and health issues", and
3. Develop "a new ambition for European trade policy".

This plan was the starting point for stronger action by the French government in favour of :

- bringing the EU's trade policy into line with its international climate commitments²⁶ and,
- the introduction of mirror measures in European legislation aimed at strengthening health and environmental standards for imported products in order to address certain regulatory gaps.

However, the provisional implementation of CETA has not mitigated the risks identified by the experts.

The example of the climate veto

"We're going to put in place what we might call a form of climate veto that will ensure from now on that the provisions designed to implement our own climate commitments cannot, under any circumstances, and particularly in the context of arbitration be attacked by an investor."²⁷

This measure, recommended by the Schubert Commission, was intended to block any proceedings relating to climate policies before arbitration tribunals were set up under the CETA.²⁸

But the proposal put forward by the French government and then by the EU²⁹, and accepted by Canada is different from the Schubert Commission's initial proposal. The jurist who had formulated this idea within the Schubert Commission has publicly expressed her dissatisfaction.³⁰

- 1) **The proposed wording adds nothing new.** The Treaty already states on several occasions that measures in the general interest that are neither discriminatory nor arbitrary are not contrary to the contracting parties' treaty commitments (art 28.3.1 or annex 8-A).
- 2) **It will not prevent investors from lodging complaints against climate measures, thereby triggering proceedings that may prove long and costly.** It will still be up to the Tribunal to rule on the admissibility of the complaint.
- 3) **The wording proposed by France emphasises the non-discriminatory nature of climate measures that comply with the CETA.** However, most climate-related lawsuits concern measures that investors rightly or wrongly claim to be discriminatory. And it will be up to the Tribunal to assess whether or not the measure in question is discriminatory. The addition of an interpretative ruling therefore does not change the process.
- 4) **It will always be possible for an investor to bring an action against a climate measure on the basis of another standard,** for example for breach of fair and equitable treatment (and the frustration of its legitimate expectations) or for indirect expropriation.

The Schubert Commission recommended that in the event of an investor's complaint against climate regulations, the contracting parties to the agreement would substitute the CETA tribunal to assess the measure's compliance with the treaty. The parties' examination would halt the contentious procedure, and if they decided that the measure complies with their commitments, the complaint before the tribunal could not proceed.

The only solution for implementing an operational and effective climate veto is to renegotiate CETA to include a genuine safeguard clause for climate measures. Moreover, the activation of such a clause should not depend on the goodwill of the investor's home country, tempted to defend the interests of its industries, but on a panel of independent climate experts under the aegis of the UN (for example, the UNFCCC) called upon to rule on the nature of the complaints before they reach the arbitrators.

4.3. A far too timid approach to sustainable development

On 24 November 2023, at a bilateral summit between the EU and Canada in Saint John, Canada, the two parties renewed their desire for cooperation and commitment on climate change, in particular by aligning their policies with the Paris Agreement.

However, the trade and sustainable development chapter is not in line with the European Commission's commitments of June 2022.

While the EU has long claimed to have put its trade policy at the service of sustainable development by integrating "trade and sustainable development" chapters into its bilateral agreements, new developments have been initiated through the 2021 trade policy review³¹ and the new strategy for trade agreements in 2022³².

In the 2021 review, the EC takes up the objective of the Green Deal for Europe³³ to make compliance with the Paris Agreement *"an essential component of future trade and investment agreements"*. This idea was originally set out in the French government's CETA action plan, which was drawn up in 2017 after the evaluation commission on CETA submitted its report.

The new 2022 strategy, for its part, proposes to *"better align the monitoring of the application of TSD chapters with the general system for settling disputes between States"* and *"extend the possibility of applying trade sanctions to cases of breaches of obligations that substantially undermine the object and purpose of the Paris Agreement on climate change or to serious cases of non-compliance with the ILO's fundamental principles and rights at work"*.³⁴

While it is normal for an agreement negotiated between 2009 and 2014 not to incorporate this approach developed by the EU at a later stage, it is regrettable that the EU did not accommodate the Canadian approach during the negotiations, in which more binding implementation mechanisms accompany the chapters on sustainable development.

Above all, the EU rejected the concrete proposals put forward by Canada in 2020 to give more effective scope to certain provisions of this chapter, as part of the discussions within the Domestic Advisory Group³⁵.










4.4. Trade liberalisation has been promoted in all areas, including polluting goods and services

Trade liberalisation covers all sectors. And the CETA's tariff sections does not make trade preferences conditional on compliance with environmental criteria.

The two tables below, from a study on the ecological and economic impacts of CETA by Transport & Environment and ClientEarth³⁶, covers goods used for transport. The CETA promotes trade in all items, including polluting goods, by lowering tariffs on them. And these reductions have been granted without introducing criteria for the size, engine type or energy performance of motor vehicles.










As a result, trade within the transport sector has risen sharply (+255% in exports for vehicles). Still, this trend is certainly not over, since some tariff barriers have only recently been lowered (buses and vans, electric cars) and their impact has therefore not yet been determined. Others are still in place for another year (combustion-powered cars).

EU Import Duties

Mode of transport	HS code	Current	CETA	Phase out period
 Passenger vehicles	8703	10%	0%	7 years 5 years (electric motors or other)
 Automotive parts	8708	4.5%	0%	Immediate on entry into force
 Buses and vans <small>(more than 10 persons incl. driver)</small>	8702	16% <small>(Cylinder capacity exceeding 2500cm³ or 2800cm³)</small> 10% <small>(Cylinder capacity below 2500cm³ or 2800cm³)</small>	0%	5 years
 Trucks	8704	22% 10% (only for trucks under 5 tonnes and a cylinder capacity below 2500cm ³ or 2800 cm ³)	0%	3 years
 Trains	8601 – 8606	1.7%	0%	Immediate on entry into force
 Ships	8901 – 8906	0% for all sea-going vessels - Varying tariffs of 1,7% or 2,7% for "others"	-	-
 Planes	8802	0%	-	-
 Bikes <small>(not motorised)</small>	8712	15%	0%	Immediate on entry into force
 E-bikes <small>(not exceeding 250 Watts)</small>	87119010	6%	0%	Immediate on entry into force

Source: Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 265, 30.10.2015

Canada Import Duties

Mode of transport	HS code	Current	CETA	Phase out period
 Passenger vehicles	8703	6.1%	0%	7 years 5 years (electric motors or other)
 Automotive parts	8708	6%	0%	Immediate on entry into force
 Buses and vans <small>(more than 10 persons incl. driver)</small>	8702	6.1%	0%	5 years
 Trucks	8704	6.1%	0%	3 years
 Trains	8601 – 8606	9.5% 11%	0%	Immediate on entry into force
 Ships	8901 – 8906	25% Cruise ships, excursion boats, ferry-boats of all kinds, tugs and pusher craft 25% Tankers 25% Vessels for transport 15% Open vessels	0%	7 years Immediate on entry into force 3 years 3 years
 Planes	8802	0%	-	-
 Bikes <small>(not motorised)</small>	8712	13%	0%	Immediate on entry into force
 E-bikes <small>(not exceeding 250 Watts)</small>	87119010	0%	-	-

Source: Departmental Consolidation of the Customs Tariff 2016 available at <http://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2016/01-99/01-99-42016-3-eng.pdf> (retrieved 21.10.2016)

CETA has also liberalised trade in sectors such as pesticides (including pesticides banned for use in the EU) and plastic products.

4.5. Regulatory discrepancies

4.5.1. Competition between different agricultural models

The Canadian and European agricultural models are quite different, and there are major differences in the legislation governing these activities.

This is why **the Schubert Commission warned against the potentially deleterious effects of making farming activities competitive.**

"As for environmental and animal welfare legislations, requirements are lower in Canada than in the EU, which could have significant consequences regarding the CETA operating framework." [p45]

"Because of trade liberalization, European farmers could be penalized by higher production costs, due to European rules that often require technical processes which are more expensive when it comes to equipment and/or labour, non-remunerative investments (such as manure processing or improved livestock buildings) or higher transport costs." [p45]

"Liberalizing trade with a country where phytosanitary requirements are lower than in the EU could have an impact on the acceptance and implementation by European farmers of practices that use farm inputs more economically. However, this process is far from easy, as shown by the difficulties experienced with the implementation of the Écophyto plan in France." [p46]

4.5.2. Absence of mirror clauses

The tariff barriers reduction has not been accompanied by sustainability clauses. The CETA does not provide for compliance with certain essential health or environmental requirements as part of the agreement's tariff conditionality, as the Schubert report urged:

"It appears that there is nothing in the CETA agreement relating to: animal feed (such as the use of animal bone meal and GMO maize and soya, pesticide residues, etc.), the use of veterinary medicines (notably antibiotics) in livestock farming, animal welfare (rearing, transport, and slaughter)". (p42);

"CETA allows Canada to continue to use antibiotics as growth promoters, although restrictions on waiting periods and residues have been tightened". (p43);

"To date, the EU imposes on third countries a program of residue control and forbids anabolic substances. It however does not formally ban their use of substances for which no maximum residue limit (MRL) has been defined in the EU, does not impose the other EU restrictions (MRL and waiting period), or the ban on the use of antibiotics as growth promoters." (p. 43)

Lack of effective controls and implementation of health recommendations

Since the end of the negotiations with Canada, the European Commission's DG Health has carried out three successive audits on the traceability and quality of the control systems in place governing the production of beef and pork intended for export to the European Union (in 2014, 2019 and 2022).

In each report, DG Health made specific recommendations to guarantee the traceability of cattle, in particular to ensure compliance with the ban on hormone-treated meat. But Canada has not responded favourably to these requests.

According to DG Health's latest report, "*the measures taken by the competent authority in response to the relevant recommendations (i.e. regarding the traceability of EU-eligible cattle, the poor performance of the approved veterinarians responsible for official controls on primary production and the supervision of these approved veterinarians) cannot be considered effective in satisfactorily addressing the shortcomings identified at farm level during the 2019 audit*"³⁷.

The absence of any effort on Canada's part to comply with the European recommendations during the provisional application of the CETA should be a source of concern for European decision-makers.

4.5.3. Regulatory setbacks during negotiations

Pressure from the Canadian government and its industrialists has already set back a number of environmental and health laws and bills during the CETA negotiations.

The Fuel Quality Directive

In 2011, as part of the revision of the Fuel Quality Directive, the European Commission proposed considering the carbon footprint of non-conventional resources such as oil from tar sands, which emit much more than other types of oil. But the text was gutted in 2014, following strong pressure from the oil lobbies and Canada. It recognises the higher emissions of this type of fuel but does not contain any coercive constraints as originally planned³⁸.

GMO legislation

In a 2016 communication, the Canadian soya interprofessional, Soy Canada, asked the European Commission to honour its commitment, apparently made during the negotiations, to rapidly implement the procedure linked to GMO authorisation requests³⁹. According to Soy Canada, importing three new transgenic varieties of soya into Europe should therefore be authorised as soon as possible. And shortly afterwards Monsanto announced⁴⁰ having obtained approval from the European Commission to import its Roundup Ready 2 Xtend GM soya, which is tolerant to glyphosate and another herbicide, dicamba⁴¹.

Carcass decontamination solution

"The EU has already authorised, by a simple exchange of letters, the use of lactic acid (December 2013) and recycled hot water (August 2015) to decontaminate carcasses, measures which have been considered by some as an anticipated concession by the EU in the negotiations, which could open the way to the authorisation of other substances. Canadian regulations authorise the rinsing and chlorine treatment of both beef and chicken, which are banned in Europe. Very recently, in June 2017, Canada has indicated its wish to make a request for the use of citric acid and peroxyacetic acid. If Europe concedes such requests, this could in time call into question the European food safety model". (Schubert Report, p45)

Furthermore, in August 2022, Canada requested authorization from the EFSA to decontaminate meat carcasses exported to the EU with peroxyacetic acid⁴², a practice prohibited in the EU. This request indicates that Canadian producers have not given up on using the beef quota granted by the EU under CETA. If accepted, this could help unlock shipments.

4.5.4. Increased pressure from Canada via the dialogue and regulatory cooperation mechanisms against existing standards and their planned reinforcement

Specific dialogue and cooperation committees made up of representatives from the EU and Canada have been set up under CETA to manage and implement the Agreement. **The forums for dialogue and regulatory cooperation set up by the agreement could contribute to a race to the bottom**, a risk already identified in the Schubert report.

"It is a concern that the cooperation procedures towards harmonization of the maximum residue limits (MRL) for pesticides in agricultural food products may lead to downward harmonisation. [p47],

"The agreement seems to encourage the opening of negotiations on these issues, and in particular the commercialization of biotechnology products " [p37].

This tension has been further exacerbated by the Green Deal and the announced objectives of greening agriculture.

The EU has been legislating for several years to ban pesticide products considered dangerous to health or the environment. And as part of the Green Deal and the farm-to-fork strategy, it was planning to go much further:

- to reduce by 50% by 2030 the use and risks associated with plant protection chemicals as measured by the toxicity of their active substances;
- reduce sales of the most hazardous pesticides by 50%, and completely eliminate the use of hazardous pesticides by 2050 by gradually replacing them with less risky products;
- reduce sales of antibiotics for farm animals and aquaculture by 50% by 2030;
- achieve 25% organic farming by 2030;
- promote more sustainable food consumption and healthy diets;

- guarantee sufficient and affordable food, while contributing to the EU's 2050 climate neutrality objective⁴³.

However, Canada takes a dim view of the various legislative projects along these lines, as they would prohibit or severely restrict access to the European market for many Canadian agricultural products. **Canada is exerting pressure on the EU to counter the tightening of regulations in the agricultural sector in a number of ways.**

But this undermining is often done discreetly, and access to information on the exact content of Canada's interventions and the EU's responses is sometimes difficult.

a. As part of multilateral discussion forums

Canada (followed by 15 and then 18 other WTO member states) submitted in July 2019⁴⁴ and in November⁴⁵ of the same year a communication to the WTO strongly criticising the new European pesticide regulations, which were seen as excessive precautions hampering free trade in agricultural products.

It led a charge against the first environmental mirror measure adopted by the EU in 2023 concerning a ban on imports of agricultural products containing traces of two neonicotinoids whose use is banned in the EU⁴⁶.

And it has asked to postpone the ban on meat imports from farms where antibiotics have been used as growth promoters⁴⁷. On this point, the European regulation prohibiting access to the EU market for animals or animal products treated with growth-promoting antibiotics should not be enforced until 2026. Moreover, it is far from being sufficiently robust to prevent the importation of these products since it relies on a self-declaration approach.

Examples of Canadian interventions against the Green Deal within the WTO framework

- WTO Committee on Technical Barriers to Trade, March 2024⁴⁸. Canada has supported a specific trade concern raised by, among others, the United States, India, and Australia against the European regulation prohibiting access to the EU market for products containing traces of clothianidin and thiamethoxam.
- WTO Technical Barriers to Trade Committee, 8-10 March 2023

“Canada, like other Members, is disappointed with the EU's decision to adopt regulation EC No 396/2005 to lower the MRLs for clothianidin and thiamethoxam to the Limit of Quantification (LOQ) based on environmental concerns for the global pollinator population.”

This policy is more trade restrictive than necessary to reach its objective. It does not appear to recognize global research and good agricultural practice, and is outside the scope of the regulatory objective to protect vulnerable consumers. If a pesticide does not have dietary concerns and poses no risks to EU consumers, the EU should maintain the MRLs or harmonize with Codex. Canada has a robust regulatory system and is confident in the mechanisms we have in place to protect consumers and the environment. Canada protects human health and the environment by conducting rigorous scientific evaluations of the risks associated with pest control products, which is critical to enabling access to the pest

management tools necessary to address pest pressures specific to the Canadian climate.

“By reducing neonicotinoid MRLs to default values when no dietary risks of concern have been identified, Canada is of the opinion that the European Union is unjustifiably applying their domestic legislation extraterritorially and hope this will not become a pattern that continues.”⁴⁹

- WTO Committee on Sanitary and Phytosanitary Measures, summary of the meeting of 9-11 November 2022

*“Canada expressed its support for the coordinated international efforts to address AMR. [antimicrobial resistance] [Regarding the ban on access to the EU market for animals and animal products treated with growth-promoting antibiotics, Canada] Canada urged the European Union to provide a **transition period of five years or more, based on the realities of production systems and product storage**”.⁵⁰*

b. As part of the CETA's thematic dialogue and regulatory cooperation activities

As expected, the activities of the various CETA dialogue and regulatory cooperation forums are proving difficult to follow for civil society and national and European parliamentarians. Although the agendas are published, the minutes of the meetings are not always very detailed and the list of participants is generally not public. However, the role of these committees can be key and lead to changes to the CETA text itself, in its annexes, without parliamentary scrutiny. In particular, the committees can make recommendations to the CETA joint committee to recognise as equivalent the lower standards of the other party, or to reduce the frequency of sanitary and phytosanitary controls.

The items placed on the agenda of the CETA's Joint Committee on Sanitary and Phytosanitary Measures by Canada since the start of provisional application of the CETA also concern European regulations on pesticides and MRLs, fertilisers, antimicrobial and antibiotic resistance, and so on. These interventions call into question the legitimacy of European rules designed to guarantee that foodstuffs, animals and animal products placed on the EU market meet the obligation to ensure a high level of protection for human and animal health and the environment.

And Canada is not hesitating to ask for additional time to implement certain rules.

Examples of Canadian interventions against the Green Deal in the context of CETA

- CETA Sanitary and phytosanitary measures joint management Committee, Brussels, October 2023:

"Canada proposed that the Commission should allow third countries to regulate pesticides in their sovereign domestic countries how they deem appropriate and suitable for their local environments."⁵¹

"Canada reiterated its longstanding concerns with the EU's hazard-based approach to the regulation of other pesticides. In particular, it raised its concerns in relation to the regulatory changes related to the reduction of the maximum residue levels (MRLs) for two additional neonicotinoids, as presently there has been no scientific evaluation conducted or notification submitted through WTO."⁵²

- CETA - Sanitary and phytosanitary measures joint management Committee, Ottawa, 25-27 October 2022:

"Canada highlighted that Canadian stakeholders are concerned that the proposed measure to revoke the MRLs of neonicotinoids by the EU is more trade restrictive than necessary to meet the EU's set objective (to protect the global pollinator population), with no additional protection provided to consumers. If adopted, this regulation could have a significant impact for Canadian farmers (seeds, oils and horticulture products)."⁵³

- CETA – Sanitary and phytosanitary measures joint management Committee, – 16-19 November 2021:

"Canada raised its concerns in relation to the timelines and implications of the implementation of the new EU requirements (on pesticides, fertilisers, antimicrobial resistance [AMR]) and requested for a longer transition implementation period."

"Canada explained its concerns over the EU's implementation of hazard-based regulatory decision-making requirements under European Commission (EC, the Commission) Regulation 1107/2009 and approach to assessing import tolerances."

"Canada requested that the EU considers maintaining maximum residue limits (MRLs) for substances that do not pose unacceptable dietary risk and that transition periods will provide sufficient time for producers and exporters to adapt to the new requirements."

"Canada requested information concerning the approach being discussed in the EU by which global environmental considerations will be taken into account into the process to set import tolerance for active substances that are no longer registered for use in the EU."

"Canada has concerns about the EU's hazard-based regulatory decision making and approach to assessing plant protection products and impacts on cut-offs for import tolerances. This threatens the continued market

access to the EU of Canadian exports of agricultural commodities valued at over 2.7 billion CAN \$ [€1.88 billion] annually”.⁵⁴

The example of glyphosate

While glyphosate was declared a possible human carcinogen by the WHO's IARC (International Agency for Research on Cancer) in 2015, Canada renewed its authorisations for the use of this pesticide for 15 years in 2017, three times the renewal period enacted by the European Union in the same year.

Glyphosate is used extensively in Canadian crops, being authorised at all stages of production and accounting for 56% of agricultural pesticides in Canada⁵⁵. This is why, in 2021, Canada has attempted to increase the MRLs for several pesticides, including glyphosate. Faced with the outcry caused by this proposal, Health Canada finally had to announce a freeze on the modification of MRLs.

In the EU, the trend is different, even if the Member States appear relatively divided on the subject. While Eastern European countries are still using this pesticide on a massive scale, Austria banned its use on its territory in 2019 based on the "precautionary principle", Luxembourg banned it before reversing its decision, France is limiting its use and has announced a ban for 2020, while Germany has declared a ban for the end of 2023.

Canada, whose exports could be affected by future bans, is unhappy about these prospects. A third of the lentils imported into Europe come from Canada and are grown using EU practices (use of the herbicide Sencoral, which has been banned on lentils in Europe for several years due to the persistent and environmentally toxic nature of its active ingredient, metribuzin, and use of glyphosate up to 4 days before harvest).

This is why Canada is trying to dissuade the EU from tightening its regulations on pesticides and glyphosate in particular. **At Monsanto's request, the European authorities even agreed in 2012 to multiply the maximum residue limit for glyphosate in lentils by 100 to facilitate North American imports into Europe.**⁵⁶

In 2022, the EU renewed the authorisation for glyphosate for another year. On 16 November 2023, no majority emerged among the Member States on the renewal question, and the Commission finally decided to renew the authorisation for 10 years, much to Canada's delight. According to the joint report of CETA Sanitary and Phytosanitary (SPS) Measures Joint Management Committee of October 3-5, 2023, in Brussels : *"Canada welcomed this regulatory proposal that follows the European Food Safety Authority (EFSA) conclusions and science-based approach. This is very important to Canadian agriculture and will be monitoring the approval process very closely."*

4.5.5. Imported deforestation

The Kunming-Montreal Global Framework, adopted following the COP on Biological Diversity 15 in December 2022, commits the parties to protect 30% of their land and maritime areas and halving the use of pesticides and excess nitrates. At the bilateral summit between Canada and the EU in Saint John

in November 2023, the two parties reiterated their desire to work together to protect the environment, particularly in relation to deforestation.

However, when the EU - responsible for 10% of global deforestation through its consumption⁵⁷ in 2016 according to the FAO - enacted a regulation against imported deforestation in 2023, but Canada vehemently opposed.

This is borne out by the "concerns and proposals" sent by Canada's ambassador to the EU, Alice Campbell, to various European representatives:

"we are greatly concerned that some elements of the EU's draft regulation on deforestation-free products will lead to significant trade barriers for Canadian exporters to the EU."⁵⁸

This regulation would be "burdensome traceability requirements"⁵⁹ for Canadian forestry companies.

Canada has also asked the EU to show flexibility in implementing the regulation on imported deforestation in order to avoid undesirable effects on trade.

"Canada raised concerns about the proposed EU regulation to minimise consumption of agricultural and forestry products from supply chains associated with deforestation. Canada shares the EU commitment to finding ways to support sustainable production but was particularly concerned that new due diligence requirements for EU trading partners would be difficult and costly to meet, and in some cases would not further the EU's objectives. Canada requested that the EU implement a flexible approach that would not unnecessarily impact trade for countries with low deforestation rates such as Canada."⁶⁰

4.6. Investment protection

More than 90% of CETA has been in provisional application since 21 September 2017. **The part not applied for the moment concerns the investment protection chapter, which will only be implemented if all the entities of the European member states that have not yet ratified the CETA do so.**

But the content of the chapter on investment already seems out of date. The CETA's chapter on investment protection is in no way in line with the new requirements laid down by the European Parliament following the modernisation of the Energy Charter Treaty.⁶¹ For example, investments in fossil fuels are not excluded from the scope of investments that benefit from legal protection (paragraph 21 of the resolution). Substantive clauses always contain ambiguous terms (paragraph 30) and the protection offered is always subject to an exceptionally long sunset clause (paragraph 31).

In 2018, Canada chose to end the investor-state dispute settlement mechanism with the United States as part of the renegotiation of the North American Free Trade Agreement, which has been in effect since 1994. This decision was justified by the Canadian Minister of Foreign Affairs, Chrystia Freeland, with these words: "This has cost Canadian taxpayers over \$300 million in sanctions and legal fees. The Investor-State Dispute Settlement elevates corporations' rights above governments' sovereignty. By removing it, we strengthen the right of our governments to regulate in the public interest, to protect public health and the environment"⁶².

4.6.1. The inclusion of fossil fuel investments in the scope of activities covered by the investment protection chapter

The incompatibility of protecting fossil fuel investments with the international community's climate commitments was formally recognised by various specialised institutions during discussions on the modernisation of the Energy Charter Treaty.

- In the third part of its sixth report, in April 2022, the IPCC recognises that international investment treaties, notably the Energy Charter Treaty, constrain the ability of states to adopt ambitious policies to combat climate change.
- France's High level council for the climate also issued an unequivocal opinion in October 2022: "The HCC concludes that the ECT, even in a modernised form, is not compatible with the 2030 climate commitments and objectives of France and the European Union."
- In June 2023, the UK Climate Change Council in turn declared that the 2022 reform of the ECT was insufficient and recommended that the UK Government withdraw from the Treaty, pointing out that a participation "in outdated treaties such as the ECT risks delaying the low-carbon transition."
- In July 2023, David Boyd, the United Nations Special Rapporteur on Human Rights and the Environment, also called on states to unilaterally or jointly terminate international investment treaties containing Investor-State Dispute Settlement (ISDS) mechanisms, including the Energy Charter Treaty (ECT), in his report alerting about the "surge in ISDS cases filed by fossil fuel investors" using investment treaties, particularly the ECT.

In light of this observation, since October 2022, 9 EU member states have announced their decision to withdraw from the ECT, the most invoked treaty in disputes between investors and states⁶³: Poland, Spain, the Netherlands, France, Slovenia, Germany, Luxembourg, Denmark, and Portugal. Ireland has also expressed its support for a coordinated withdrawal. Among these countries, six have officially notified their withdrawal. France, Germany, and Poland will no longer be signatory countries to the ECT as of December 2023, Luxembourg as of June 2024, Slovenia in October 2024, and Portugal in February 2025.

Climate disputes in investment arbitration

The fossil fuel industry is the leading sector in the ISDS system in terms of number of cases⁶⁴, accounting for almost 20% of all known cases (ahead of the mining industry, 11%). The majority of known cases have been decided in favour of investors. Investors were successful in 72% of cases.

In addition, the average amount awarded in fossil fuel cases - more than USD 600 million - is almost five times higher than in other cases.

Emblematic climate cases include:

- **Vattenfall vs. Germany (2009)**: in 2009, the Swedish energy company challenged the environmental restrictions imposed by the city of Hamburg on one of its coal-fired power plants and sued Germany. It was claiming €1.4 billion. The case was closed after the city of Hamburg agreed to lower its environmental requirements.
- **RWE and Uniper vs. the Netherlands (2021)**: RWE and Uniper were claiming compensation of more than €2.4 billion following the so-called "coal law" adopted in 2019, which stipulates that

coal will no longer be used to produce electricity by 2030. (If both complaints were eventually withdrawn, the government had already incurred legal fees totalling 5.4 million euros.)

- **Ascent resources vs. Slovenia (2022):** the UK-based energy company with interests in a gas project at Petisovci initiated a dispute following the decision to ban hydraulic fracturing and is seeking €656.5 million in damages (for investments of €50 million).

Investors often use the threat of investment arbitration to try to change public policy or prevent public policy measures in the environmental and climate field that could harm their profits.

The unravelling of the Hulot law on hydrocarbons

In August 2017, Nicolas Hulot, recently appointed Minister for the Environment, drafted a bill that was supposed to end hydrocarbon extraction throughout France by 2040, in accordance with the Paris Agreement.

Vermilion, a Canadian oil and gas company that produces nearly 75% of the country's oil and owns 26 hydrocarbon extraction sites in France, then threatened the Conseil d'Etat to initiate investor-State dispute settlement proceedings on the basis of the Energy Charter Treaty⁶⁵.

This law, known as the "Hulot Law", was finally passed on 30 December 2017, in a watered-down version: far from banning hydrocarbon extraction, it allows oil extraction concessions to be renewed until 2040, and even beyond in some cases.

In November 2023, the public enquiry commission ruled in favour of the Vermilion group's request to build eight new boreholes on the Cazaux site, in the forest recently ravaged by the flames at La Teste-de-Buche. This decision, which contradicts the recommendations of the International Energy Agency, still has to be confirmed by the Gironde prefecture in early 2024⁶⁶. And any reversals in this area could be the subject of future claims against the French state before an investment tribunal.

This is why the European Parliament has formulated a new requirement to exclude investments in fossil fuels or any other activities that seriously damage the environment and human rights.

"The European Parliament [...] stresses that global efforts to combat climate change will require a rapid transition to renewable energy and fast government action to reduce reliance on fossil fuels; urges the Commission and the Member States to ensure consistency between IIAs and the European Green Deal, environmental policies, labour rights and human rights, by excluding from treaty protection investments in fossil fuels or any other activities that pose significant harm to the environment and human rights, and by including in the sustainable development chapters provisions that help compliance with the Paris Agreement, international treaties on labour and gender equality, and provisions aiming at improving the domestic framework regulating foreign investment (...)"⁶⁷

Governments must have sufficient room for manoeuvre to adapt their policies and accelerate the ecological transition. In this context, **the scope of the exclusion should not be limited to fossil fuels but to energy in general and mining activities.**

Protecting renewable investments: a false good idea

In the face of increasing calls to end protection for fossil fuel investments, some supporters of the Energy Charter Treaty (ECT) argue that it remains an essential tool for protecting investments in renewable energies. In reality, however, this protection is proving counterproductive⁶⁸.

With a rapidly changing climate and a shifting economic context, governments need the agility to quickly adapt how public money is spent to encourage the ecological transition. The recent pandemic and financial crises have shown just how quickly economic conditions can change, and the need for governments to review their supporting public policies from time to time. In some cases, after an initial period of strong support for renewable energies through public spending, governments have had to scale back their subsidy schemes because the market appeared to be highly competitive or because the initial support programmes had become unsustainable due to the fall in demand for electricity or the unexpected and enthusiastic adoption of incentives by producers.

France itself has been called into question by a German investor, Encavis, after photovoltaic contracts were revised in December 2020 to control public spending and comply with state aid rules⁶⁹.

Questioning the abandonment of the Montagne d'Or mining project

The Montagne d'Or project, launched in 2011 and planned to extract 85 tonnes of gold from a protected biological reserve in the Guiana Forest, sparked off strong protests and a large-scale public campaign in Guiana and mainland France. The project entailed significant environmental impacts: cyanidation between two reserves of high biodiversity value, deforestation of more than 1,500 hectares, including primary forests on a site home to 127 protected plant and animal species, etc.

Under pressure from the public, the French government finally decided to halt the project in spring 2019, by refusing to renew the mining concession held by Canadian company Orea Mining and Russian company Nordgold. The latter, relying on the bilateral investment treaty between the French and Russian states dating back to 1989, filed a notice of dispute in September 2020, followed by a formal request for arbitration in June 2021. The investors are claiming more than \$4.5 billion, equivalent to half the presumed value of the mine.

If the investment protection provisions of the CETA had already come into force, the Canadian company could also have brought a parallel action against the French government, like the Gabriel Resources vs. Romania dispute⁷⁰.

4.6.2. Substantive clauses still too ambiguous

The new approach promoted by the European Parliament also calls on the Commission to continue reviewing protection standards and to tighten them up on preventing discrimination between foreign and domestic investors and lack of access to justice.

“The European Parliament [...]

Welcomes the fact that, since 2016, EU IIAs containing investment protection clauses include more precise wording for some protection standards, as well as the right to regulate;

underlines that EU IIAs should not allow broad protection standards to be used to challenge legitimate public policies;

considers that protection standards should focus specifically on creating a level playing field between foreign and domestic investors, preventing and offering redress in cases where EU investors in non-EU countries are discriminated against, are denied access to justice, or fully lose the enjoyment of their investment to the benefit of the host state, including in times of war, and reciprocally for non-EU investors in the EU;

asks the Member States and the Commission to avoid including ambiguous terminology in substantive clauses, and to continue reviewing protection standards on the basis of available evidence.”⁷¹

In the CETA, a reference to the States' right to regulate has been added, but remains very limited due to its wording.

Annex 8-A §3 du CETA : “Except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations. ”.

It does not therefore constitute an absolute exception to the obligation to compensate for measures taken in the public interest to protect health and the environment.

In addition, recent decisions by arbitral tribunals indicate that even when exceptions are incorporated into investment agreements, they are ignored by the latter. For example, in its award of 21 September 2021, the arbitral tribunal in the *Eco Oro v Colombia* dispute⁷² considered that the environmental exception contained in the Free Trade Agreement between Colombia and Canada was irrelevant⁷³.

The insufficient scope of environmental exceptions: the example of the *Eco Oro v Colombia* dispute

The dispute arose from a concession contract between the Canadian mining company Eco Oro and a Colombian state entity. The contract granted the company rights to explore and exploit deposits. The concession area straddled the Páramo region, a high-altitude wetland that plays an essential role in the water cycle and acts as a carbon sink. For this reason, regulations and court rulings prohibited mining companies from exploiting minerals in this region. This led Eco Oro to initiate arbitration proceedings against Colombia under the FTA in 2016.

The court had to examine whether the environmental exception contained in Article 2201(3) of the FTA was applicable. But the court found that *"whilst the State cannot be prohibited from adopting or enforcing an environmental measure in accordance with Article 2201(3), [the Tribunal] cannot accept ... that in such circumstances payment of compensation is not required"*⁷⁴. **The decision therefore renders the exception clauses contained in the agreements completely irrelevant.**

For Wolfgang Alschner, author of *"Investment Arbitration and State-Driven Reform: New Treaties, Old Outcomes"*, this situation reflects the spread of a *"misconception that new treaties will automatically produce new results"*. In reality, *"if we look at the first wave of awards made in investment arbitration under these new generation treaties, we can see that, on the contrary, courts tend to interpret these new treaties as they would have interpreted the old ones"*⁷⁵.

Germany's request for an interpretative declaration

In 2022, Germany asked for the addition of a new interpretative declaration defining the right of States to regulate. The aim of this declaration was once again to ensure that the CETA's investment protection rules did not prevent States from regulating in the public interest, including by taking measures to mitigate and adapt to climate change⁷⁶.

But as noted by an expert commissioned by MEP Saskia Bricmont⁷⁷, the draft declaration provides no guarantees. The obstacles to ecological transition imposed by investment law are systemic and deeply rooted in the structure of agreements such as the CETA investment chapter. The draft declaration merely proposes interpretations of what is already in the agreement, without radically altering the content of the rights and obligations enshrined in CETA. There is therefore nothing in the draft declaration to address legitimate concerns about CETA or other investment treaties. The impact of the draft declaration on the interpretation of CETA can only be minimal.

The expert concludes that the imbalance in favour of investors in CETA or any other investment agreement can only be changed by amending or revoking existing treaties.

It should be noted that Germany ratified the agreement at the end of 2022, even before this proposed interpretative declaration had been validated by all the Member States and Canada.

4.6.3. An unreasonably long sunset clause

The European Parliament was rightly concerned about the length of the sunset clause included in the ECT, which protects investments made before a State party leaves the agreement, for a period of 20 years.

The Rockhopper v. Italy case triggered after the Treaty was signed

The case of Rockhopper v Italy was initiated in 2017, on the basis of the EC Treaty, after Italy's exit from that treaty. The dispute concerned the refusal of a licence to operate an offshore oil field by virtue of a ban issued at the request of local authorities and environmental associations.

The court awarded over €240 million in compensation, well over the tens of millions invested to date. And the company announced that it would reinvest this sum in the development of another oil project in the offshore Falklands⁷⁸.

The existence of this sunset clause has often been invoked to disqualify any proposal to leave the ECT. And the European Union is currently negotiating an interpretative text to neutralise this sunset clause between European countries leaving the ECT.

The European Parliament has called on the Commission and the Member States to change their practice and considerably shorten these clauses.

“The European Parliament [...] underlines the fact that EU IIAs negotiated after 2009 still include sunset clauses which prevent easy termination; takes note of recent negotiations in which parties agreed to a five-year sunset clause with the possibility to agree on an extension of five additional years in case no replacement is found; calls on Member States and the other contracting parties to neutralise sunset clauses in current agreements, and to significantly shorten sunset clauses in new investment agreements.”⁷⁹

The sunset clause included in the CETA is also for 20 years, which is completely out of step with this new approach.

Conclusion

The CETA is once again the subject of heated debate.

Despite the very encouraging communications from the EC and Javier Moreno's resolution on the implementation of the CETA, the concrete results obtained after these first 6 years paint a mixed picture for trade and a clearly negative one for the environment.

Not to mention the fact that this picture could get even darker with the full and final implementation of the agreement, including the provisions on investment protection.

Despite the announcements of an innovative and ambitious agreement on the environment, it appears that CETA:

- was negotiated at the cost of certain relaxations in European legislation
- **contributed to a significant increase in trade in polluting goods and services such as fossil fuels, fertilisers, plastic products, vehicles, chemicals, iron, steel, aluminum and nickel, transports and tourism**
- **does not contain tariff conditions for compliance with sustainability criteria in production methods and processes**
- creates no additional incentive for Canada to comply with the current rules in force in the European Union (no guarantee that European imports will not contain hormone-treated meat)
- **provides new opportunities for Canada and industry to lobby against strengthening European health and environmental legislation, such as the end of import tolerances on products treated with pesticides banned in the EU or the European regulation on imported deforestation.**

These observations are merely the materialisation of the risks anticipated by the Schubert Commission set up by the French government, whose concrete recommendations could not be followed because discussions on the content of the agreement were not reopened.

Furthermore, the provisions of the CETA's chapter on investment protection - the only ones not yet implemented as part of the provisional application - already appear obsolete, in contradiction with the European Green Deal and the new approach defined by the European Parliament. For example, this chapter protects fossil fuel investments and other investments that are harmful to the environment and human rights. It also contains a 20-year sunset clause for all protected investments in the event of an exit from the agreement.

So many reasons not to call on all the Member States to ratify the agreement definitively, nor to give the green light at the French level.

Recommendations

An ex-post evaluation of the agreement between the EU and Canada is scheduled for 2024.

This exercise should make it possible to measure the compatibility of the CETA with the EU's and Canada's international commitments on the environment and the protection of human rights.

The objective of increasing trade flows in goods, services and FDI should no longer be the main criterion for assessment. The increase of trade in so-called "environmental" goods (the list of which is still open to question and only accounts for a small proportion of trade) does not offset the negative impact of the increase of trade in non-environmental goods.

Based on this assessment, changes should be made to the agreement to:

- **reduce the flow of environmentally harmful goods and services** (e.g., fossil fuels, pesticides, plastic products, certain internal combustion engine-powered transport equipment, etc.) and,
- **set specific requirements regarding production methods and processes to promote more sustainable flows, particularly in the agricultural sector.**

The regulatory cooperation and thematic dialogue provided for in the agreement should be clearly oriented towards strengthening consumer, worker, environmental and fundamental rights protection. Trade facilitation should be no more than an indirect consequence of efforts to harmonize rules towards a higher standard.

The chapter on investment protection, the very need for which has been the subject of much debate, should be dropped for good.

Notes

¹ This alliance seems to be primarily a political communication operation. Its official aim is to "further intensify their political, technical, economic and scientific cooperation on climate action and environment protection at both bilateral and multilateral", but it "does not, nor is it intended to create any rights or obligations under domestic or international law and has no financial implications for either Partner"

² Implementation of the EU-Canada Comprehensive Economic and Trade Agreement (CETA), [Procedure File: 2023/2001\(INI\) | Legislative Observatory | European Parliament \(europa.eu\)](https://ec.europa.eu/commission/presscorner/api/files/attachment/873592/Factsheet%20CETA.pdf)

³ 5 years CETA https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/e9b27fdd-308c-445d-aad1-337bd0b853d5?p=1&n=10&sort=modified_DESC where EC summary sheets have been published country by country, and this link

(<https://ec.europa.eu/commission/presscorner/api/files/attachment/873592/Factsheet%20CETA.pdf>) gives the general summary sheet

⁴ The United Kingdom, which has left the EU, also ratified the CETA while it was still a Member State.

⁵ See the Statements to include to the Council minutes of 27 October 2016, and in particular Council statement 22

⁶ France tv info, War in Ukraine, customs duties against Russia, CETA and war in Gaza... What should we learn from Valérie Hayer's interview, 25/03/2024, https://www.francetvinfo.fr/replay-radio/8h30-fauvelle-dely/querre-en-ukraine-droits-de-douane-contre-la-russie-ceta-et-querre-a-gaza-que-faut-il-retenir-de-l-interview-de-valerie-hayer_6416224.html

⁷ In November 2022, the Irish Supreme Court handed down its judgement in Costello v the Government of Ireland and prevented the Irish Government from ratifying the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada under Article 29 of the Irish Constitution. In its decision, the Supreme Court held that ratification of CETA would require either a constitutional amendment, which requires a referendum, or an amendment to the Irish Arbitration Act 2010, in order to reduce the mandatory nature of the enforcement in Ireland of awards that might be made under the investor-state dispute settlement (ISDS) provisions of CETA. At the core of the case lies the Supreme Court's concern that the requirement to enforce an award issued by a CETA tribunal could result in an impermissible infringement of legal sovereignty.

⁸ Le Parisien avec AFP, Ceta : pas de vote à l'Assemblée nationale avant les européennes, annonce Franck Riester, 26/03/2024, <https://www.leparisien.fr/elections/europeennes/ceta-pas-de-vote-a-lassemblee-nationale-avant-les-europeennes-annonce-franck-riester-26-03-2024-4DPCTTRN25HRJPJLWZFNCKTBCM.php>

⁹ <https://www.international.gc.ca/trade-commerce/economist-economiste/analysis-analyse/benefits-ceta5-avantages.aspx?lang=fra>

¹⁰ Asteres, « CETA, pas d'impact notable sur le commerce », mars 2024 https://asteres.fr/site/wp-content/uploads/2024/03/Note_CETA_Asteres.pdf

¹¹ Opportunities and Benefits of CETA for Canada's Oil and Gas Exporters, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/business-entreprise/sectors-secteurs/OGE-EPPG.aspx?lang=eng>

¹² "CETA is a highly sustainable trade deal, with strong climate and labour commitments", 5 years CETA, general factsheet of the EC,

<https://ec.europa.eu/commission/presscorner/api/files/attachment/873592/Factsheet%20CETA.pdf>

¹³ Comprehensive Economic and Trade Agreement (CETA) and the environment *A gold standard for the planet or for big business*, Transport & Environment, Client Earth, Novembre 2016,

https://www.transportenvironment.org/wp-content/uploads/2021/07/2016_11_CETA_Gold_Standard_FINAL.pdf

¹⁴ "Revealed: Canadian government spent millions on secret tar sands advocacy", The Guardian, Martin Lukacs, Aout 2015. <https://www.theguardian.com/environment/true-north/2015/aug/11/canadian-government-spent-millions-on-secret-tar-sands-advocacy>

¹⁵ This sector includes business services that exclude manufacturing services using physical inputs belonging to third parties, building and public works services, insurance and pension fund services, telecommunications services, computer and information services, and maintenance and repair services not included elsewhere.

¹⁶ 5 years of CETA, factsheet of the EC,

<https://ec.europa.eu/commission/presscorner/api/files/attachment/873592/Factsheet%20CETA.pdf>

¹⁷ Rueda-Cantuche, J.M., Piñero, P. and Kutlina-Dimitrova, Z., EU exports to the world: effects on employment, EUR 30875 EN, Publications Office of the European Union, Luxembourg, 2021, ISBN 978-92-76-42685-1, doi:10.2760/556206, JRC126534

¹⁸ Estimates of the employment content of exports are available for the years 2000, 2007 and 2014.

¹⁹ same report from DG Trade

²⁰ <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/5528fb92-30f2-4bf4-89ba-8dfc5a8c6ede/details>

²¹The definition used in this report for SMEs is a company with fewer than 250 employees, according to the data available on Eurostat and the Commission reports using the same data.

²² Market access rules concern, for example, the limitation on the number of companies that can access a market, the legal form of an investment or the share of capital held by foreign investors. Performance requirements refer to local content or technology transfer obligations.

²³ Rapport au Premier ministre sur L'impact de l'Accord Économique et Commercial Global entre l'Union européenne et le Canada (AECG/CETA) sur l'environnement, le climat et la santé mené par la Commission Schubert, 7/09/2017 -

https://www.gouvernement.fr/upload/media/default/0001/01/2017_09_rapport_de_la_commission_devaluation_du_ceta_-_08.09.2017.pdf

²⁴ Summary of Communication COM(2000) 1 of 2 February 2000 from the European Commission on recourse to the precautionary principle <https://eur-lex.europa.eu/FR/legal-content/summary/the-precautionary-principle.html>

²⁵ Implementing CETA: the government's action plan, 25 October 2017, <https://www.gouvernement.fr/dossier-de-presse/9656-aecgceta-plan-d-action-du-gouvernement>

²⁶ Among the French proposals that were taken up as part of the Green Deal and then the European review of the approach to the sustainable development chapters of trade agreements, in 2022, are the inclusion of the Paris Agreement as an essential element of trade agreements and a more binding mechanism for implementing the provisions on climate and the fundamental conventions of the ILO. The rest of the subjects covered by the sustainable development chapters are not yet subject to this new implementation mechanism, with the possibility of recourse to trade sanctions as a last resort.

France also proposed that the precautionary principle be included across the board in each agreement. But this has not yet been accepted.

²⁷ Nicolas Hulot, Minister for the Ecological Transition, statement of 15 October 2017

²⁸ See the Schubert report, page 9 "For appeals that might be brought by a foreign investor concerning a measure to combat climate change, the committee recommends introducing into the CETA treaty a mechanism allowing the Contracting Parties to determine, instead of the ICS tribunal, whether such a measure is consistent with the treaty. If the contracting parties adopt a decision of compatibility, the investor's appeal is rejected. In practice, such a "veto" mechanism will allow Contracting Parties to ensure that their climate policies are not impeded by the Investment Chapter's procedures."

²⁹ CETA : Text enshrining the "climate veto" (15.07.19) - Ministry of Europe and Foreign Affairs (diplomatie.gouv.fr)

³⁰ See the op-ed published in Le Monde on 10 July 2019 by Sabrina Robert-Cuendet, a professor of international public law at the University of Le Mans, is a member of the Commission responsible for assessing the impact of CETA on the environment, climate and health (Schubert Commission). CETA: "States should shoulder their responsibilities in the event of climate disputes".

³¹ Trade policy review - an open, sustainable and robust policy, COM (2021) 66 final, 18 February 2021

³² The power of trade partnerships: together for green and fair economic growth, COM (2022)

³³ "The Commission will propose to make compliance with the Paris Agreement an essential element of all future global trade agreements, Communication from the EC, The Green Deal for Europe, COM(2019)640 final, 11 December 2019.

³⁴ It should be noted, however, that sanctions are only envisaged as a last resort, i.e. only when a "panel of experts finds that a party is in breach of its trade and sustainable development commitments and is not complying within the prescribed timeframe". Furthermore, the EC is not planning to include a complaints and sanctions mechanism in all its trade agreements. On the contrary, it advocates a "tailor-made" approach for each agreement, depending on the trading partner concerned.

³⁵ Third Meeting of the CETA Joint Committee, 2 December 2022, Canada, Joint Report, p. 8

³⁶ Comprehensive and Economic Trade Agreement (CETA) and the environment *A gold standard for the planet or for big business*, Transport & Environment, Client Earth, novembre 2016

https://www.transportenvironment.org/wp-content/uploads/2021/07/2016_11_CETA_Gold_Standard_FINAL.pdf

³⁷ Extract from the report of an audit carried out by DG Health and food safety in Canada from 7 to 27 september 2022 <https://ec.europa.eu/food/audits-analysis/audit-report/download/16008>

³⁸ Revision of the Fuel Quality Directive: a significantly weakened new proposal, Friends of the Earth, November 2014 <https://www.amisdelaterre.org/wp-content/uploads/2014/11/note-de-decryptage--fqd-affaiblie.pdf>

³⁹ « Soy Canada calls on the European Union to Honour Commitments in CETA Negotiations », communication from Soy Canada, 29 April 2016, <http://www.bilaterals.org/>

⁴⁰ « Roundup Ready 2 Xtend Soybeans Gain EU Import Approval », 22 July 2016,

<http://news.monsanto.com/pressrelease/corporate/roundupready2xtendsoybeansgaineuimportapproval>

⁴¹ "Les menaces du traité de libre échange avec le Canada (CETA) sur l'agriculture française", Amis de la Terre, Aitec, Attac, Confédération paysanne, FNH, 2016

<https://www.amisdelaterre.org/wp-content/uploads/2016/10/note-ceta-agri.pdf>

⁴² Joint Report: CETA Joint Sanitary and Phytosanitary (SPS) Management Committee, October 3-5, 2023 (Brussels), Agenda and Final Minutes <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/2023-10-03-summary-spm-sommaire-msp.aspx?lang=fra>

⁴³ European Council, presentation of the farm-to-fork strategy, <https://www.consilium.europa.eu/fr/policies/from-farm-to-fork/>

- ⁴⁴ Communication sent to the WTO on 4 July 2019 against the 'Implementation of non-tariff barriers on agricultural products' in the European Union - G/C/W/767/ - (19-4486) - <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/C/W767.pdf>
- ⁴⁵ Communication addressed to the WTO on 1 November 2019 against the 'Implementation of non-tariff barriers on agricultural products' in the European Union - G/C/W/767/ - (19-7362) - <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjY3PuMjYqDAXmVaQEHYPECv0QFnoECCcQAO&url=https%3A%2F%2Fdocs.wto.org%2Fdol2fe%2FPages%2FSS%2Fdirectdoc.aspx%3Ffilename%3Dr%3A%2FG%2FC%2FW767R1.pdf&usq=AOvVaw2LykWyifHsDqjVEXD5kH2Q&opi=89978449>
- ⁴⁶ Summary of the 9-11 November 2022 meeting of the Committee on Sanitary and Phytosanitary Measures, G/SPS/R/108, 16 December 2022: Specific trade concern regarding Regulation 396/2005 (raised by India and supported by Colombia, Israel, Paraguay, Costa Rica, Uruguay, Brazil, Guatemala, China, Argentina and Canada)
- ⁴⁷ Committee on Sanitary and Phytosanitary Measures, summary of the meeting held on 9-11 November 2022, G/SPS/R/108 16 December 2022
- ⁴⁸ Trade concern database, European Union – draft commission regulation amending annexes II and V to regulation (EC) n°396/2005 of the European parliament and of the Council as regards maximum residue levels for clothianidin and thiamethoxam in or on certain products (ID 763) <https://tradeconcerns.wto.org/en/stcs/details?imsId=763&domainId=TBT&searchTerm=neonicotinoids> (Compte-rendu des débats non disponible)
- ⁴⁹ WTO, committee on technical barriers to trade, minutes of the meeting from 8 to 10 march 2023, G/TBT/M/89, 11 May 2023 - <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/M89.pdf&Open=True>
- ⁵⁰ WTO Committee on Sanitary and Phytosanitary Measures, SUMMARY OF THE MEETING OF 9-11 NOVEMBER 2022 <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SPS/R108.pdf&Open=True>
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- ⁵⁵ Bacon, M-H, Vandelac, L. & S. Petrie, « Pesticides : le Talon d'Achilles des politiques alimentaires canadiennes et québécoises », *La Revue canadienne des études sur l'alimentation*, 2018.
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- ⁵⁸ Letter from Ailish Campbell, Canada's Ambassador to the European Union, to the European Parliament and the European Commission, Brussels, November 17, 2022 <https://subscriber.politicopro.com/f/?id=00000184-a4ee-d605-af85-fdee04900000>
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- ⁶³ There are currently 150 known claims for investor-state dispute settlement under the ECT, with €115 billion in compensation requested, of which €43 billion has been granted.
- ⁶⁴ Investor-State Disputes in the Fossil Fuel Industry, Léa Salvatory, IISD, 31 décembre 2021, [Investor-State Disputes in the Fossil Fuel Industry | International Institute for Sustainable Development \(iisd.org\)](https://www.iisd.org/fr/publications/investor-state-disputes-in-the-fossil-fuel-industry)
- ⁶⁵ Canada is not a member of the ECT, but Vermilion appears to have sufficient investments in member countries to benefit from the investment protection offered by the Treaty.
- ⁶⁶ "In Gironde, outcry against plans to drill eight new oil wells", *Le Monde*, Perrine Mouterde, 22 December 2023, In Gironde, outcry against a project to drill eight new oil wells (*lemonde.fr*) and "Canadian oil company Vermilion

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⁶⁷ Texts adopted, Thursday, 23 June 2022 - Brussels, Future of EU international investment policy, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0268_EN.html

⁶⁸ "Protecting renewables with the Energy Charter Treaty: a false good. Lessons learned from an analysis of renewable energy arbitrations under the ECT", Veblen Institute, Nikos Braoudakis, Clémentine Baldon (Baldon Avocats), Sara Lickel & Mathilde Dupré (Institut Veblen), July 2021

⁶⁹ Encavis and others v. France | Investment Dispute Settlement Navigator | UNCTAD Investment Policy Hub

⁷⁰ Canadian mining company Gabriel Resources is seeking €6.2 billion in compensation from the Romanian state. The case was submitted to an investment tribunal in 2015, on the basis of the bilateral investment treaty between Romania and Canada.

⁷¹ Texts adopted, Thursday, 23 June 2022 - Brussels, Future of EU international investment policy, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0268_EN.html

⁷² [Decision](#) on jurisdiction, liability and directions on quantum, 9 septembre 2021, ICSID Case No. ARB/16/41,

⁷³ [Eco Oro and the twilight of policy exceptionalism – Investment Treaty News \(iisd.org\)](#)

⁷⁴ Voir §836

⁷⁵ IISD, An interview with Wolfgang Alschner on Investment Arbitration and State-Driven Reform: New Treaties, Old Outcomes, 04/07/2022, <https://www.iisd.org/itn/fr/2022/07/04/an-interview-with-wolfgang-alschner-on-investment-arbitration-and-state-driven-reform-new-treaties-old-outcomes-wolfgang-alschner-florenca-sarmiento/>

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⁷⁷ Report Evaluating the Proposed Joint Interpretation of the Comprehensive Economic and Trade Agreement (CETA), J. Benton Heath, December 2022

⁷⁸ "Oil firm Rockhopper wins £210m payout after being banned from drilling", Arthur Nelsen, 24/08/2022 <https://www.theguardian.com/business/2022/aug/24/oil-firm-rockhopper-wins-210m-payout-after-being-banned-from-drilling>

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The Veblen Institute for Economic Reform is a non-profit think tank that promotes public policy and civil society initiatives in favour of ecological transition. The current economic model is profoundly unsustainable and must be transformed in a spirit of social justice and respect for planetary boundaries.

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The Veblen Institute's trade programme is supported by Funders for Fair Trade, the European Climate Foundation and the Charles Léopold Mayer Foundation.

