

Assessing the Climate Impact of Trade Policy and Agreements

A Case Study of CETA



PowerShift

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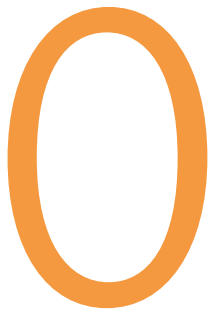
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ABBREVIATIONS

BIT	Bilateral Investment Treaty
CETA	Comprehensive Economic and Trade Agreement
DAG	Domestic Advisory Group
DCFTA	Deep and Comprehensive Free Trade Area
EFSA	European Food Safety Authority
EGA	Environmental Goods Agreement
EU	European Union
FDI	Foreign Direct Investment
FQD	European Union Fuel Quality Directive
FET	Fair and Equitable Treatment
GHG	Greenhouse Gas
GM	Genetically Modified
GPSD	General Product Safety Directive
HS	Harmonised System
ICS	Investment Court System
ICSID	International Centre for Settlement of Investment Disputes
ISDS	Investor-to-State Dispute Settlement
LNG	Liquefied Natural Gas
MEP	Member of European Parliament
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
SPE	Special Purpose Entity
SPS	Sanitary and Phytosanitary
TFEU	Treaty on the Functioning of the European Union
TSD	Trade and Sustainable Development
TTIP	Transatlantic Trade and Investment Partnership
UNCTAD	UN Conference for Trade and Development
USMCA	United States-Mexico-Canada Agreement
WTO	World Trade Organisation

Contents

0	Executive Summary	5
1	Introduction	9
2	Methodology	11
3	Trade in goods between the EU and Canada	14
	Evolution of trade in goods – the general picture	15
	Iron ore imports from Canada	17
	Crude oil and hard coal imports from Canada	19
	Bilateral beef trade	21
	Rapeseed and soya bean imports from Canada	23
	Bilateral trade in forest products	25
	Euro-Canadian plastics trade.	28
	Putting trade of ‘green goods’ into perspective	31
	In a nutshell.	33
4	Rules, institutions, and decisions governing climate policy	35
	Climate check: Sustainability Chapter.	37
	Implementation of sustainability provisions – only scratching the surface.	38
	Weakness in civil society participation mechanisms.	38
	Sustainable Development Chapter – a toothless tiger	39
	In a nutshell.	40
5	Committees and bilateral dialogues established under CETA	41
	Freezing, or even weakening, protection standards.	43
	Lack of transparency	44
	Even parliamentarians left out of the loop	45
	Enabling the lowering of health and other standards – Examples	45
	Shaping policy: Privileged corporate influence and access.	49
	In a nutshell.	52
6	Investment: flows, stocks and protection	53
	FDI run through EU tax havens.	53
	ICS will enable lawsuits against climate action.	57
	Potential for oil and gas litigation under CETA.	60
	EU’s inconsistency – time to end exclusive corporate rights!	61
	In a nutshell.	62
7	Recommendations	63
	Endnotes	66



Executive Summary

CETA is a Trojan horse. At first sight, it decreases tariffs and fosters trade between the parties. But look again: CETA is a threat to consumers' and environmental protection standards.¹

– Mirjam Hägele, Foodwatch

This study, prepared by PowerShift, provides an analysis of the climate impact of the Comprehensive Economic and Trade Agreement (CETA) between the European Union and Canada, which entered into provisional application on September 21, 2017.

The methodology used for this ex-post assessment rests on four pillars:

- 1 an analysis of the variations of trade in goods between the EU and Canada, with a focus on commodities whose trade has a significant impact on climate change;
- 2 an analysis of rules, institutions and decisions that govern the climate policies of the trade agreement;
- 3 an analysis of the work of CETA committees and dialogues that have a strong climate impact;
- 4 estimates of the implications of CETA's investment provisions regarding flows, stocks and investment protection.

This methodology goes beyond traditional impact assessments as it includes an analysis of goods that were already duty-free when CETA entered into force, such as iron ore, crude oil, hard coal, soya beans or many wood products. Only by including these commodities was it possible to identify the extent of harmful trade requiring targeted measures under a truly progressive trade agreement mitigating climate change.

Trade in goods between the EU and Canada

The analysis of the variations in trade flows reveals that bilateral trade in numerous products harmful for the climate has indeed increase since CETA's implementation. This is the case for the most important mineral raw material exported from Canada to the EU – iron ore – as well as fossil fuels such as crude oil and hard coal. In addition to accelerating climate change, the production and consumption of these minerals and fuels causes numerous other environmental impacts – such as air and water pollution, biodiversity loss and land use changes.



Photo: Roya Ann Miller / Unsplash.com

The liberalisation of trade in agricultural products adds to the negative climate impact of CETA. The quotas and tariff preferences offered for animal products such as dairy and beef pose particular risks, given that both partners largely failed to make any significant progress in reducing the GHG emissions of their livestock sectors, with methane the most harmful of the greenhouse gases emitted. Since CETA's implementation, both partners' beef exports have risen sharply.

Closely linked to the livestock industry is the Euro-Canadian trade in oilseeds used for animal feed, especially soya beans and rapeseed. While EU soy bean imports from Canada saw a rather modest increase, EU rapeseed imports, however, grew considerably since CETA's application. The large majority of rapeseed and soya plants grown in Canada are genetically modified to withstand being sprayed with herbicides. The use of these herbicides has increased substantially over the last 15 years causing biodiversity loss and significant GHG emissions.

Trade in forest products has also increased since CETA's implementation. While EU wood imports from Canada reversed the decline they had experienced before the agreement, EU exports to Canada increased sharply. The bilateral increase in timber trade occurs against the background of accelerated forest loss in Canada and the EU as well. In both regions,

forest land is suffering from a decrease in the ability to remove carbon dioxide, mainly due to high rates of industrial logging.

CETA's market access commitments for the chemical industry are also fuelling demand for goods harmful for the environment. For instance, since CETA's implementation, EU plastics exports to Canada have risen substantially, including particularly damaging products such as microplastics, plastic packaging and synthetic fibres. The production of these plastics requires large amounts of energy and is thus a huge contributor to climate change.

Another concern relates to the absence of targeted measures to mitigate the climate risks of trade in all these products. CETA does not link its trade preferences to concrete improvements in the production process of the sectors benefitting from the agreement. It also lacks concrete provisions to reduce or end trade in especially harmful products such as fossil fuels. Another glaring lacuna relates to the lack of technology transfer to facilitate the decarbonisation in the sectors which have been liberalised.

These failures cannot be compensated by the fact that trade in environmental goods saw a slight increase since CETA's implementation, given that the share of 'green' goods in total bilateral trade never surpassed the threshold of 10 percent. It is therefore difficult to see how



Photo: Thomas Kohler / Flickr.com

‘green’ goods should be able to offset the climate impact of the 90 percent non-green and emissions-intensive goods exchanged between the EU and Canada.

Rules, institutions and decisions governing climate policy

The analysis of the rules and institutions governing the agreement reveals further shortcomings. CETA’s sustainability chapters, for instance, lack precise commitments to climate protection and do not even include a reference to the Paris Agreement – although the CETA negotiations coincided with the adoption of the Paris Agreement. The Trade and Sustainable Development Committee made only lacklustre efforts in enforcing meaningful climate protection measures, while the role of civil society in monitoring these provisions remains very limited.

These weaknesses are compounded by the fact that the sustainability chapter is exempt from CETA’s state-state dispute resolution mechanism, leaving it vulnerable to violations and subversion. Moreover, the European Commission declined Canada’s offer to allow penalising violations of sustainability commitments with trade sanctions – despite the widely acknowledged deficit in enforcing sustainability provisions in EU trade agreements. This refusal is also regrettable as neither Party can claim to be a

climate champion: both Canada and the EU are lagging behind in achieving their climate goals.

Committees and bilateral dialogues

The activities of the committees and bilateral dialogues established under CETA are another cause for concern. For instance, the committees enjoy extensive powers including the right to amend the agreement without the involvement of the European Parliament – a privilege which raised concerns about their democratic legitimacy. By mutually recognising each other’s standards, the committees may weaken environmental and climate regulations or limit the ability to unilaterally strengthen the requirements, for instance, for energy-intensive industries. Against this backdrop, the lack of transparency in the CETA committees is worrying: detailed minutes are not readily available, and key information on participants is absent.

The risks to environmental standards are clearly illustrated by the discussions in the SPS Committee on food safety. Canadian officials, for instance, argue that the EU’s Maximum Residue Levels for pesticides are too stringent, a barrier to trade for their farmers. They also seek to influence regulations on Genetically Modified Organisms (GMOs) and want the EU to accept higher levels of unauthorised GM contamination in its export crops. Canada also

used CETA's bilateral dialogue on forest products to challenge the EU's new deforestation regulation – a worrying development given the huge emissions associated with the ongoing forest loss in both Canada and the EU.

The fossil fuel lobby, particularly in Canada, managed to significantly influence the EU Fuel Quality Directive during CETA negotiations. Tar sands oil, whose climate impact is especially high, is not adequately accounted for in the directive. This lobbying success may hinder future efforts to strengthen EU regulations on fossil fuels.

Investment: flows, stocks and protection

Other shortcomings relate to CETA's rules on investment liberalisation and investment protection. CETA does not contain any provisions committing the partners to implement climate-related criteria for bilateral FDI (Foreign Direct Investment). Such an environmental investment screening mechanism is needed because the emissions-intensive manufacturing industry and the mining, oil and gas industry are among the top sectors receiving bilateral investments in the EU and Canada. In addition, the analysis of FDI flows and stocks reveals that the large majority of bilateral investments in the EU and Canada are channelled through the two important EU tax havens, the Netherlands and Luxembourg. Yet, these capital flows are diminishing the fiscal revenues desperately needed to support the energy transition.

The Investment Court System (ICS) – a modified version of Investor-State-Dispute Settlement – gives foreign investors the exclusive right to sue states for damages if policy decisions impact their profits. This corporate privilege can significantly increase the cost of strong climate legislation – or even prevent the adoption of respective laws – due to the threat of excessive compensation payments. Given the huge bilateral investments in the oil, gas and manufacturing sectors, CETA has the potential to enable many investment disputes on climate legislation, emissions standards and the energy transition. Moreover, the 'Interpretative

Declaration' intended to minimise these risks does not provide sufficient policy space as it is largely inadequate for this purpose.

All these weaknesses point to perhaps the most basic failure of EU trade policy in relation to the climate crisis – the ongoing prioritisation of liberalisation over transformation. But as our analysis of CETA's implementation clearly shows, these priorities must be reversed. The transformation of the productive apparatus, the decarbonisation of goods traded internationally must take precedence over the dismantling of barriers to trade in order to mitigate climate change.

Recommendations

For a future revision of CETA we would therefore offer the following recommendations:

- 1 include strong provisions on climate protection in all chapters of the agreement;
- 2 restrict or end trade in harmful products;
- 3 disempower undemocratic committees and create transparency;
- 4 include environmental investment screening and reject Investor-State Dispute Settlement.

1

Introduction

In an era marked by rising geopolitical tensions and the urgent need to combat climate change, the intersection of trade and the environment has emerged as a critical focal point for researchers, policymakers and environmental advocates alike. The climate crisis has led to renewed interest in trade agreements in particular, as they can have significant impact on greenhouse gas emissions by increasing international trade of often emissions-intensive goods and services. On the other hand, however, trade agreements – when properly designed – could instead promote climate mitigation and adaptation on a global scale, as well as the decarbonisation of global supply chains.

The Comprehensive Economic and Trade Agreement (CETA) between the European Union (EU) and Canada stands out as a notable example of a contemporary trade agreement with profound implications for climate change and the environment. CETA, which entered into provisional application on September 21, 2017, represents one of the broadest and most comprehensive trade deals in the world. The agreement not only seeks to reduce numerous trade barriers to energy-intensive goods but also impacts on various aspects of environmental governance, raising growing concerns about its impact on global warming.

The EU has a pivotal role in the transition towards greener trade in a net zero world. This is due to its importance as a trading power and its ambitious climate goals, as outlined in the European Green Deal. European institutions also influence the global discourse on the environmental effect of international trade agreements. At the beginning of CETA’s ratification process, for instance, the European Commission and the Council promoted the deal as one of “the most progressive trade agreements the EU has ever concluded”, which they said would include “some of the strongest commitments” on environmental protection and climate change.² Yet, many experts, researchers and civil society groups were more critical of the environmental merits of the agreement, questioning in particular its impact on climate and biodiversity.³ Given the widely differing views on the climate impact of the agreement and the ratification process still ongoing in the EU, CETA provides an excellent case study to investigate how trade agreements, particularly those involving partners with strong environmental commitments, actually influence climate outcomes.



Photo: Gatis Rozenfelds, Valsts kanceleja / Flickr.com

This study therefore delves into the multifaceted relationship between the EU-Canada trade agreement and climate change. By examining CETA's provisions and mechanisms, as well as actual trade flows between the EU and Canada, the analysis presented here seeks to shed light on the potential impacts of trade agreements on global warming. The study also provides a deeper understanding of the mechanisms included in such a trade agreement, and their potential effects on trade flows impacting the environment. In addition, the analysis aims to help stakeholders to identify the clauses that need to be amended in order for the agreement to actually contribute to net zero trade. It is therefore also meant as a tool to support policy makers in reshaping trade policy and advancing the EU's climate objectives.

On the following pages, we will explore the trade flows before and after CETA's implementation, the environment- and climate-related provisions, key components and institutions of the agreement, and the manifold challenges the agreement poses to greener trade. We will analyse the potential trade-offs between the market access commitments and the EU's environmental objectives, and assess whether CETA aligns with the overarching objective of combatting global warming. Through this analysis, we hope to contribute to the ongoing debate on the role of trade in achieving a climate-neutral economy in a net-zero world.

2 Methodology

In today's globalised world, trade agreements play a pivotal role in shaping economic relations between nations. Yet, these agreements are not static documents. They rather evolve and adapt over time, leading to significant impact on the economies, societies and eco-systems of the signatory countries. Evaluating and understanding this impact is crucial for policymakers, stakeholders, and the public alike. However, assessing the ex-post impact of a trade agreement requires a certain methodology which has to be adapted to the specific objectives of the evaluation.

The main objective of our study is to evaluate the climate impact of CETA since its provisional application in September 2017. In this respect, our approach is more focussed than other ex-post evaluations of trade agreements, particularly those conducted by the European Commission.⁴ The EU's ex-post evaluations are one of four assessment tools used by the Commission during the lifecycle of a trade agreement (see Box 1).

The Commission's ex-post evaluations are evidence-based assessments of the extent to which an agreement has been effective in fulfilling its objectives. Commission services usually prepare the ex-post evaluations and may also draw on work outsourced to external service providers. The official ex-post evaluation of CETA is scheduled for 2024.

One of the most recent ex-post evaluations published by the Commission has been on the Deep and Comprehensive Free Trade Area (DCFTA) with Georgia, released in September 2023. The final report of the DCFTA evaluation reveals some of the limits of the EU approach. While assessing a rather broad set of issues, including economic, regulatory, business, labour and environmental effects, the climate outcome is not given significant attention. Out of 110 pages, only three deal with the climate impact of the agreement. This assessment is mainly based on the highly aggregated results of an econometric model covering only a limited set of energy-related Green House Gas (GHG) emissions.⁵

BOX 1

EU tools for the assessment of trade agreements⁶

Stage	Instrument
Preparation	Impact Assessment
Negotiations	Sustainability Impact Assessment (SIA)
Signature/Conclusion	Economic Assessment of the negotiated outcome
Implementation	Ex-post evaluation

Another drawback of the Commission’s approach relates to the overarching objective of the trade agreement whose fulfillment is being assessed: the increase of bilateral trade. As the Commission bluntly states: “The Comprehensive and Economic Trade Agreement, or CETA, is a trade deal between the EU and Canada. It aims to boost trade and help generate growth and jobs.”⁷⁷ In contrast, the key research question of our ex-post assessment relates to the agreement’s contribution to the objective of a net-zero global economy, not to its boosting of bilateral trade. Concerningly, the EU approach to ex-post assessments is far too limited to gain proper insight into the climate impact of the implementation of a trade agreement such as CETA. A different approach, one that focuses squarely on the climate crisis, is necessary.

The methodology employed for our ex-post assessment of CETA’s implementation rests on four pillars:

- 1 analysis of the **variations of trade in goods**, with a focus on high-impact commodities (fossil fuels, raw materials, emissions-intensive industrial products, forest-risk commodities);
- 2 analysis of **rules, institutions and decisions that govern the climate policies** of the trade agreement;
- 3 analysis of the **work of CETA committees and dialogues** that have a strong climate impact;
- 4 estimates of the implications of CETA’s **investment provisions** regarding flows, stocks and investment protection.

The analysis in all four pillars of our methodology has been conducted using a specific climate lens.

The **first pillar** provides basic data charting the evolution of trade in goods between the EU and Canada since CETA’s implementation. The main objective of this pillar is to identify goods that have a strong climate impact, including those

that were already duty-free when CETA entered into force. The reason for this approach is that a truly green trade agreement must include targeted measures that mitigate the risks of all emissions-intensive goods, regardless of specific tariff reductions or variations in trade flows. In addition, the analysis also includes an assessment of the rather modest role of so-called ‘green goods’ that are being promoted under CETA.

The **second pillar** takes a closer look at the rules, institutions and decisions governing the climate policies of CETA. It provides analyses of the CETA chapters on sustainable development and environment, the work programme of the Committee on Sustainable Development, the Domestic Advisory Groups and the Commission’s “Interpretative Declaration”, which is supposed to strengthen CETA’s rather weak climate provisions.

The **third pillar** consists of an analysis of committees and dialogues, established under CETA, whose decisions may influence the climate impact of the agreement. The committees and dialogues reflect CETA’s character as a “new generation” trade agreement – one which focuses not only on tariff reductions but also on the elimination of non-tariff measures such as technical standards or environmental regulations. Decisions on these kinds of measures, including amendments of the agreement itself, may be taken by committees, which are composed of EU and Canadian officials, and focus on areas such as goods, agriculture or sanitary and phytosanitary measures. These decisions may also be prepared in bilateral dialogues on issues like regulatory cooperation, raw materials or forest products. The ongoing work of committees and dialogues which we assess under this pillar is a key example of why CETA has been described as a “living agreement” which is constantly evolving.

Finally, the **fourth pillar** of our methodology examines CETA’s investment provisions, part of which – investment protection – will only be applied once the treaty has been ratified in all EU member states. However, liberalisation com-



Photo: Albert Hyseni / Unsplash.com

mitments that aim to stimulate bilateral investment flows and thereby increase investment stocks already came into force in September 2017. Our analysis thus provides data on EU-Canadian investment flows and stocks and an assessment of potential climate impacts of the Investor-State Dispute Settlement procedure due to be implemented after CETA's final ratification.

Our four-pronged methodology provides a structured framework to assess the climate outcomes of CETA's implementation. It takes account of the specific interplay of treaty rules, institutional mechanisms, government regulations and economic actors' decisions on trade and investment flows between the EU and Canada.

Our methodology goes beyond traditional impact assessments, which are usually based on the presumed changes in trade flows due to the dismantling of tariffs and non-tariff measures. Unlike these assessments, we take the actual trade and investment relationship as a starting point to identify all harmful trade requiring special treatment to mitigate the climate impact of the respective trade agreement. This analysis is supplemented by an evaluation of the concrete decisions taken in the realm of the institutional mechanisms established under the agreement.

On this basis, it is possible to devise targeted mitigation measures that would improve production processes and phase-out trade in particularly harmful goods. Our methodology therefore seeks to empower policymakers, civil society, and the broader public by offering a practical tool to support the improvement of trade agreements that are already in force. We will further refine the methodology employed here and are aiming to apply it to other trade agreements in the future.

3

Trade in goods between the EU and Canada

The main purpose of this chapter is to provide some basic data on the evolution of trade in goods between the EU and Canada, with a particular focus on goods having a strong impact on sustainability and climate change. In this context, it is important to note that although CETA was provisionally applied since September 2017, this does not necessarily imply a causal link between the trade agreement and the variations of trade flows outlined.

The data presented here should rather be seen as part of a scoping exercise to identify goods with a significant climate impact, that would require special treatment in a truly green trade agreement. Such treatment should be applied regardless of the level of tariff reductions agreed or the specific variations in trade flows.

Another note concerns the approach of our scoping exercise. Official impact assessments usually attempt to measure and evaluate the presumed changes in trade flows due to tariff cuts. Yet, unlike these official assessments, we also consider products where CETA does not foresee new market access or tariff reduction commitments. This concerns, for example, commodities that were already largely duty-free in the EU before CETA, such as iron ore, coal, crude oil, soya, rapeseed as well as many timber products.

Trade in all of these commodities has serious implications for climate change, both in terms

of production and consumption. Excluding them from an assessment of CETA's climate impact would therefore provide a highly distorted picture of an agreement that has been presented as a major step forward for green and sustainable trade.

This in turn highlights the criteria that we believe should be used when assessing a progressive trade agreement. One of the key objectives of a truly sustainable trade accord should be to identify the most harmful products in the parties' bilateral trade and to agree concrete measures that would eliminate the environmental risks they pose. These mitigation measures can take various forms, including improved production methods or the reduction and phasing-out of trade in especially harmful products. These measures may also be supplemented by commitments to provide technical and financial assistance, as well as technology and know-how transfer, as deemed necessary by the parties.

The above outlines why we consider the following criterion to be the most important one for our assessment: the extent to which CETA actually contributes to eliminating the burdens on the environment and the climate caused by EU-Canadian trade. In the subsequent sections we hope to answer this question by assembling and analysing basic data on the trade flows between the EU and Canada.

Evolution of trade in goods – the general picture

In the first two years since the provisional application of CETA, EU trade in goods with Canada has steadily increased. Yet in 2020, the impact of the COVID-19 pandemic caused a marked decline in bilateral trade. This slump, however, was followed by a strong recovery in the last two years. Over the entire period considered, the EU achieved a huge surplus in its trade with Canada (Figure 1).

The composition of bilateral trade between the EU and Canada reveals a certain imbalance.

While the EU’s exports are largely dominated by manufactured goods, such as machines, cars and chemicals, Canada’s exports to the EU have a significantly higher share of raw materials and energy. Overall, the share of the manufacturing industry in Canada’s export portfolio is significantly lower than in the EU’s (Figure 2).

This rather broad overview of the composition of EU-Canada trade already provides some indications of which sectors require examination to assess CETA’s climate impact. In the case of

Figure 1: EU trade in goods with Canada 2010 – 2022

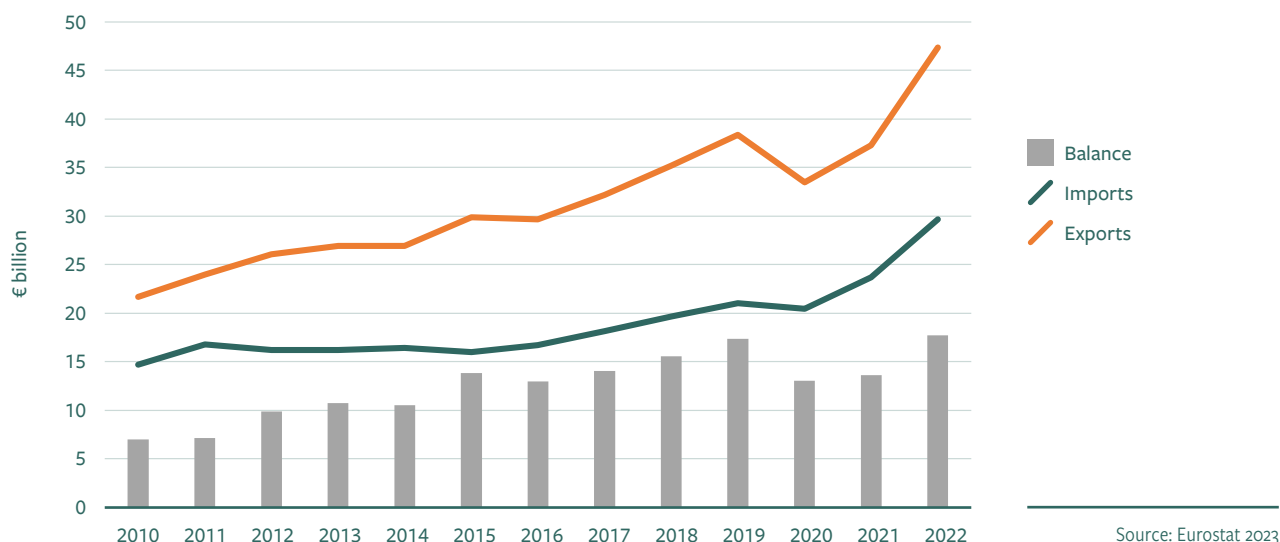
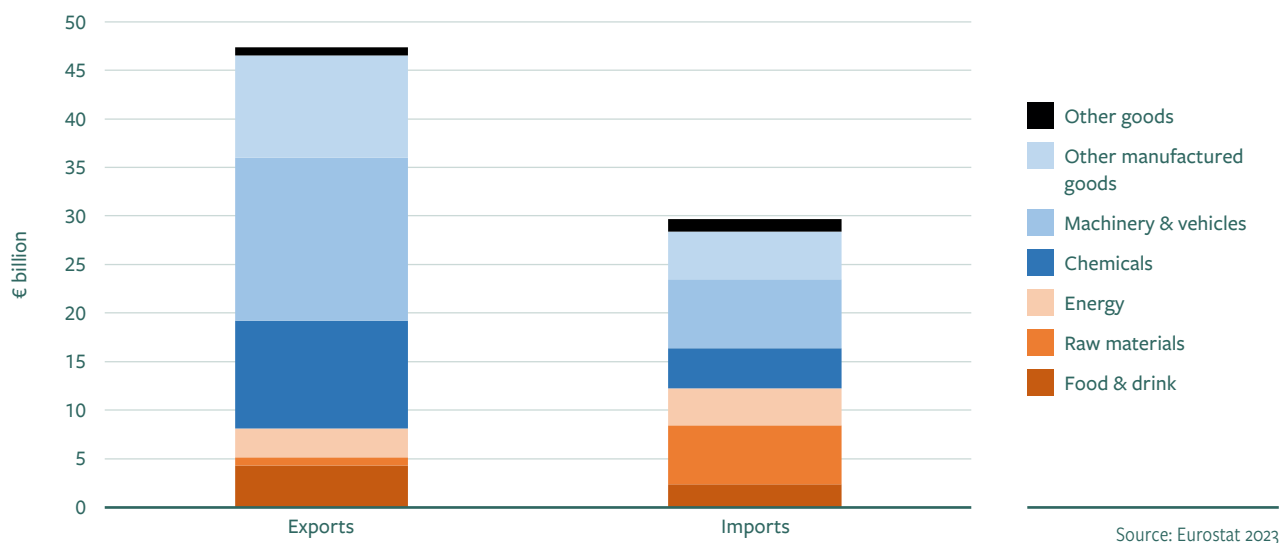


Figure 2: EU trade with Canada by product group 2022



the EU, it is obvious that the manufacturing sector and its GHG emissions require attention.

In the case of Canada, in addition to the raw materials and energy sectors, the manufacturing industry's climate impact must also be considered. Finally, the food and agricultural sector should not be neglected in either case, even if it ranks somewhat lower in the sectoral breakdown of bilateral trade. This is because both partners are lagging behind in curbing their agricultural GHG emissions, especially in the livestock sector.

A compilation of the top 10 products exchanged between the EU and Canada in 2022 provides a more detailed overview. Products of the chem-

ical (pharmaceuticals, compounds) and automobile industry (cars, motors) are among the most important items in the EU's trade portfolio (Figure 3). For Canada, raw materials and fossil fuels such as iron ore, crude oil and coal represent some of the most traded commodities (Figure 4). The partner's top 10 lists also reveal a sizeable two-way trade of fossil fuels. Canada supplies crude oil to Europe, but at the same time imports considerable quantities of refined oil (products such as gasoline) from the EU. Other important products in bilateral trade that are potentially harmful for the climate include aircrafts, fertilisers and oil seeds. As for the latter, Canada is an important supplier of rapeseed and soya beans to the EU.

Figure 3: Top 10 EU exports to Canada 2022 (€ billion)

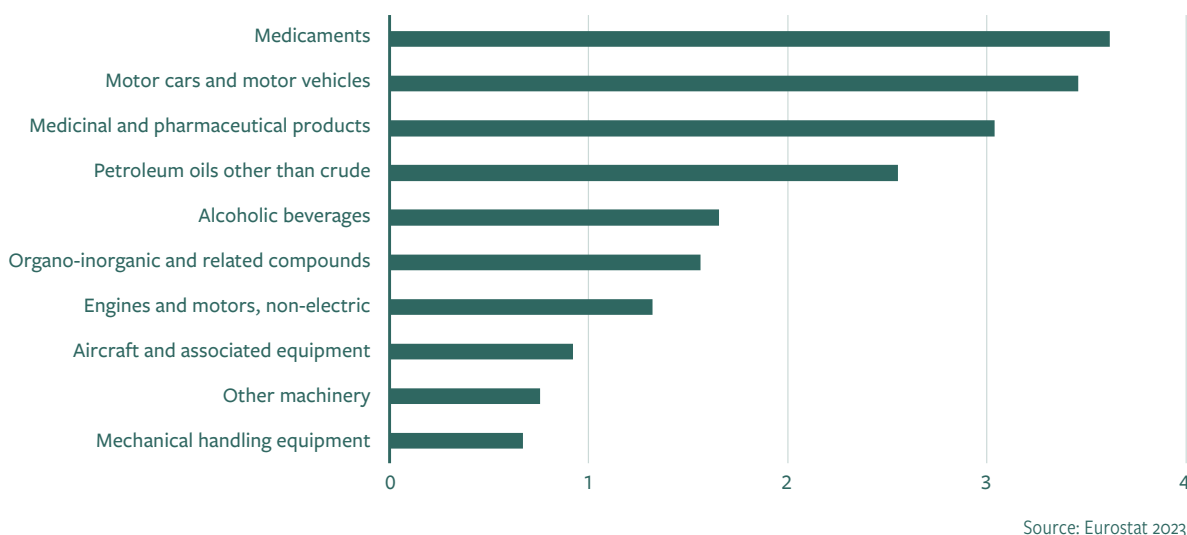
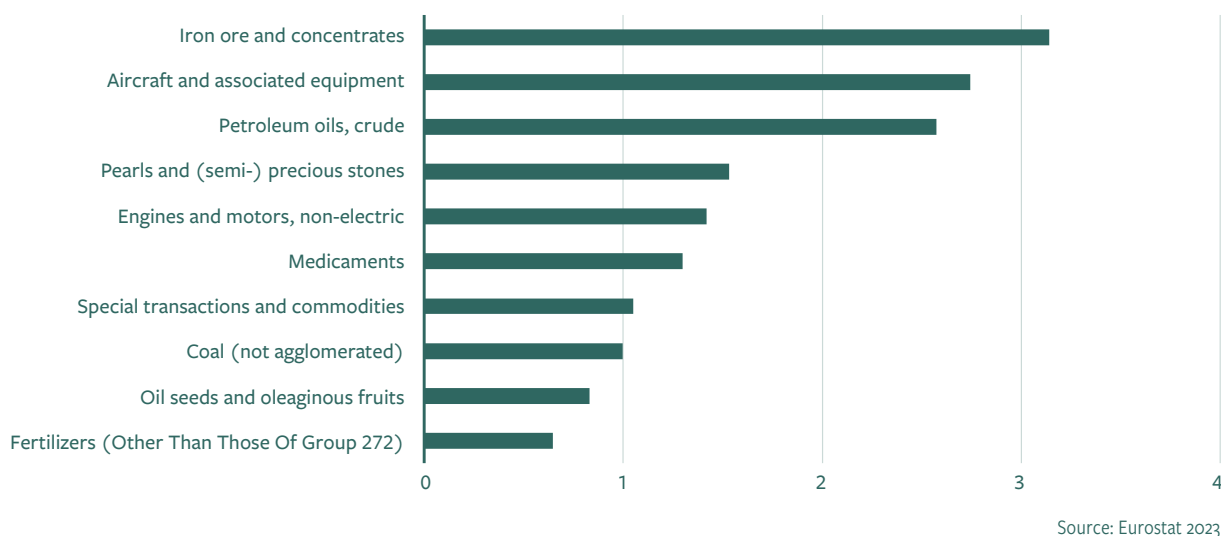


Figure 4: Top 10 Canadian exports to the EU 2022 (€ Billion)



Iron ore imports from Canada

Canada is an important supplier of raw materials for the European iron and steel industry, one of the most energy and emissions-intensive branches of the manufacturing sector. Amongst others, the country exports sizeable amounts of iron ore, the indispensable component of iron and steel production.

But as iron ore is already subject to zero tariffs in the EU it has been largely ignored in assessments of the CETA agreement. This is a significant omission, given the serious environmental impacts associated with iron ore extraction – such as air and water pollution, biod-

iversity loss and land-use changes, causing carbon emissions and numerous negative impacts for local communities. In Canada, there are recurrent conflicts over iron ore production, as in the case of the Mary River Mine, co-owned by Luxembourg-based ArcelorMittal.⁸

Expressed in monetary terms, the volume of EU iron ore imports from Canada has increased considerably since the provisional application of CETA. In the last two years, the trade value more than doubled compared to the period preceding the agreement (Figure 5).

Figure 5: EU: Iron ore imports from Canada 2010 – 2022 (volume and value)

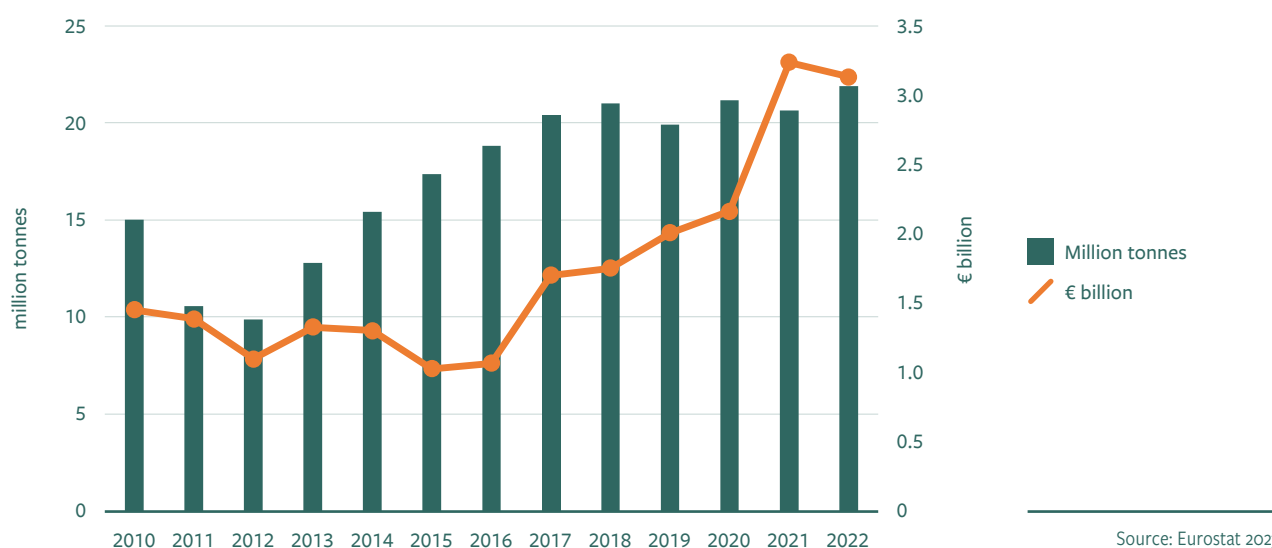


Photo: Aedrian / Unsplash.com

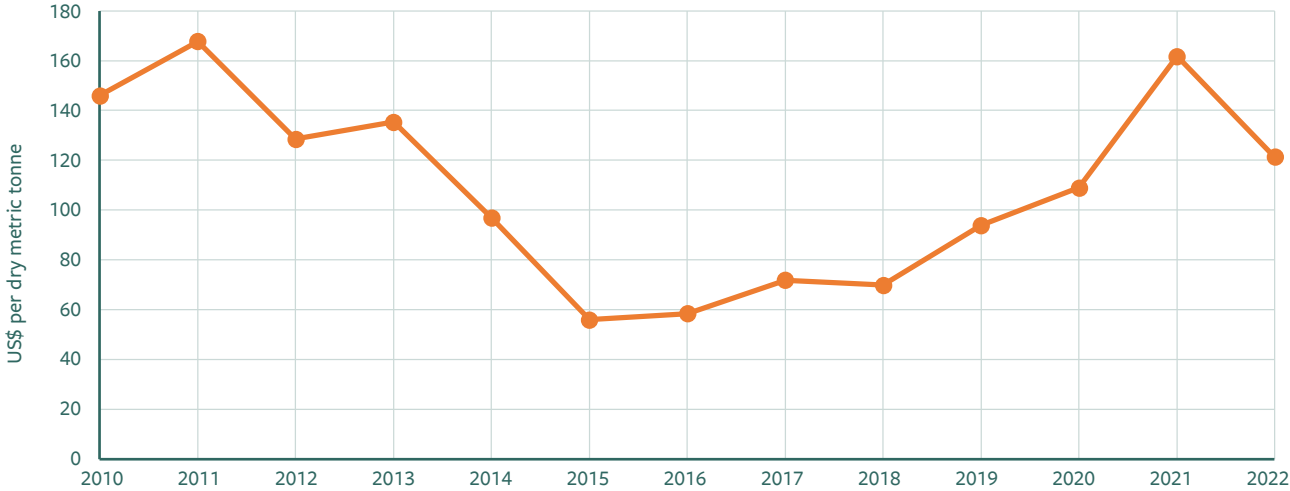
Yet the picture is slightly different when the traded volumes are expressed in physical terms. Since 2017, the variation of iron ore imports from Canada was less pronounced, fluctuating at around 21 billion tonnes. Nevertheless, the volume of tonnes of iron ore exported from Canada each year since 2017 is still significantly higher than from 2010 to 2017. Comparing the evolution of the monetary and physical volumes traded indicates that price effects played a role.

That world market prices did indeed influence the monetary values the EU imported from Canada highlights the spot prices for iron ore. As can be seen, the iron ore price saw a sharp in-

crease between 2019 and 2021 and reduced again in 2022 (Figure 6). However, the higher volumes imported from Canada in physical terms may be an indication that CETA helped to cushion the blow from the price jump on the world market – a rather questionable outcome from an environmental perspective.

Given the increased level of imports and the overall environmental impact of iron ore along the supply chain – including its extraction, transportation and smelting in blast furnaces – it would have been desirable to see targeted mitigation measures addressing these negative impacts included in CETA. But unfortunately this has not happened.

Figure 6: Iron ore spot price 2010 – 2022



Source: World Bank 2023



Photo: Curioso Photography / Pexels.com

Crude oil and hard coal imports from Canada

Another cause for concern is EU-Canadian trade in fossil fuels. Despite the urgent need to phase-out the production and use of fossil fuels, CETA does not contain any provisions in this regard. This, alarmingly, has allowed an almost unhindered growth of European crude oil imports from Canada, which saw a steep rise since CETA's application. Importantly, the import surge is not merely a monetary phenomenon, but also a physical one. Crude oil imports have risen strongly both in value and volume, albeit to a lesser extent in 2019 and 2020, but with a big jump in 2022 (Figure 7).

The fact that the increase by value is still somewhat higher than that by volume suggests that oil prices also played a role. The evidence shows that the global average price for crude oil rose sharply in 2021 and 2022 (Figure 8).

Price effects influenced the evolution of coal imports into the EU as well. Whereas CETA's implementation was followed by a marked increase of EU hard coal imports from Canada in value terms, still physical trade developed somewhat differently. While the first two years after the implementation also registered a sig-

Figure 7: EU: Crude oil imports from Canada 2010 – 2022 (volume and value)

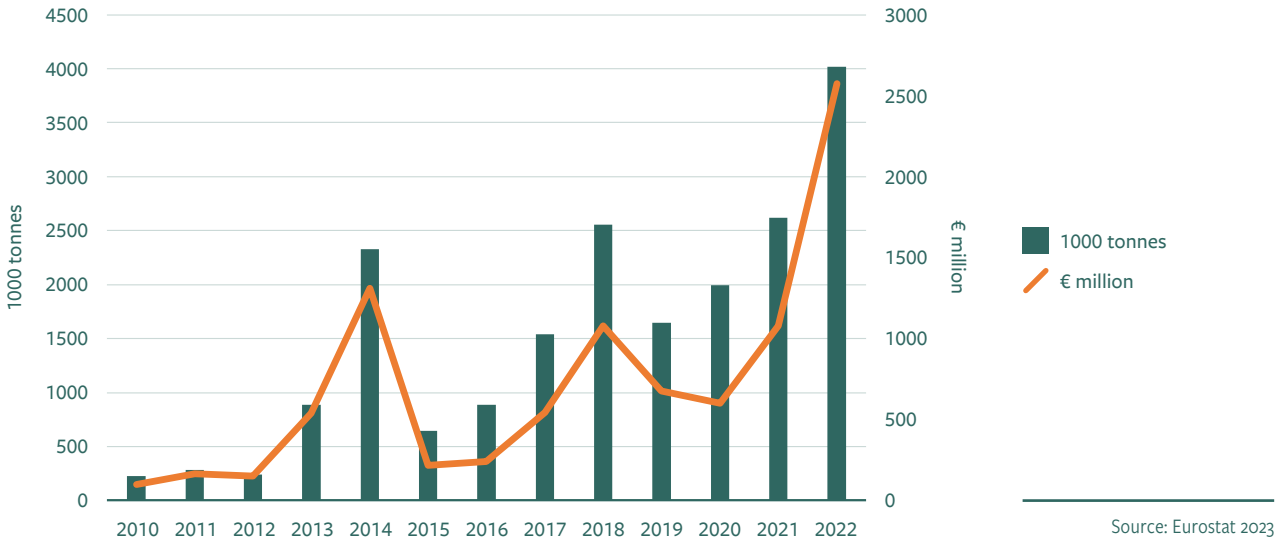
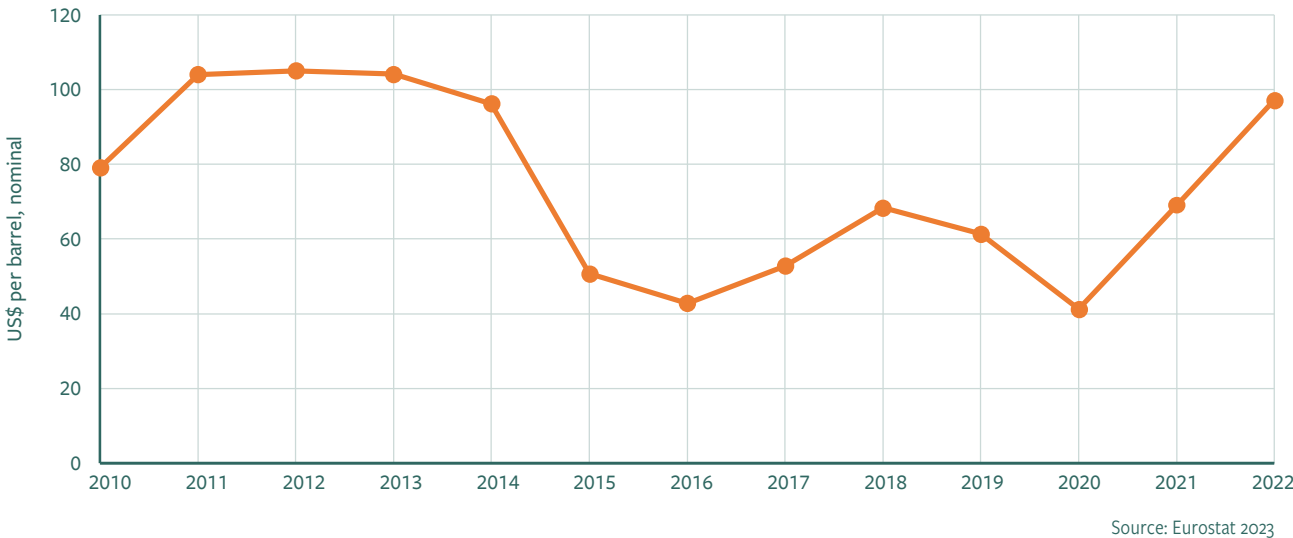


Figure 8: Crude oil average price 2010 – 2022



nificant increase in physical trade compared to the years preceding CETA, 2019 and 2020 saw a decrease, which in turn was followed by a renewed increase in the past two years (Figure 9).

The evolution of the world market price for Australian coal – a global benchmark – shows that the huge EU imports of Canadian coal expressed in monetary terms were indeed influenced by market developments (Figure 10). The 2022 price hike for coal on the world market also inflated the import price for Canadian coal.

Given the urgency of the climate crisis and the need to end the use of fossil fuels entirely, there

is no denying that the level of coal trade between the EU and Canada remains a matter of concern, even if the increase in trade is not as pronounced as in the case of crude oil.

Assessments of the EU-Canada trade agreement should therefore put a strong focus on developments in the area of both crude oil and coal trade, regardless of the fact that EU import tariffs on these commodities were already set at zero before CETA. By doing so, impact assessments should also highlight one of CETA’s major weaknesses: the fact that it does not address, or indeed ignores, the need for a rapid phase-out of fossil fuel production, trade and consumption.

Figure 9: EU hard coal imports from Canada 2010 – 2022 (volume and value)

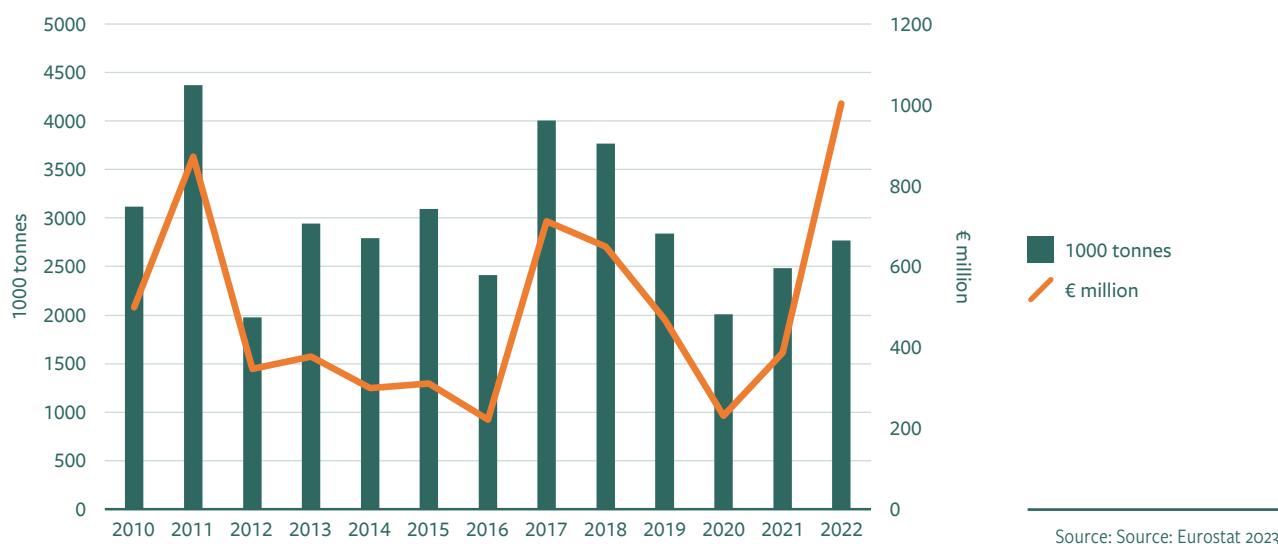
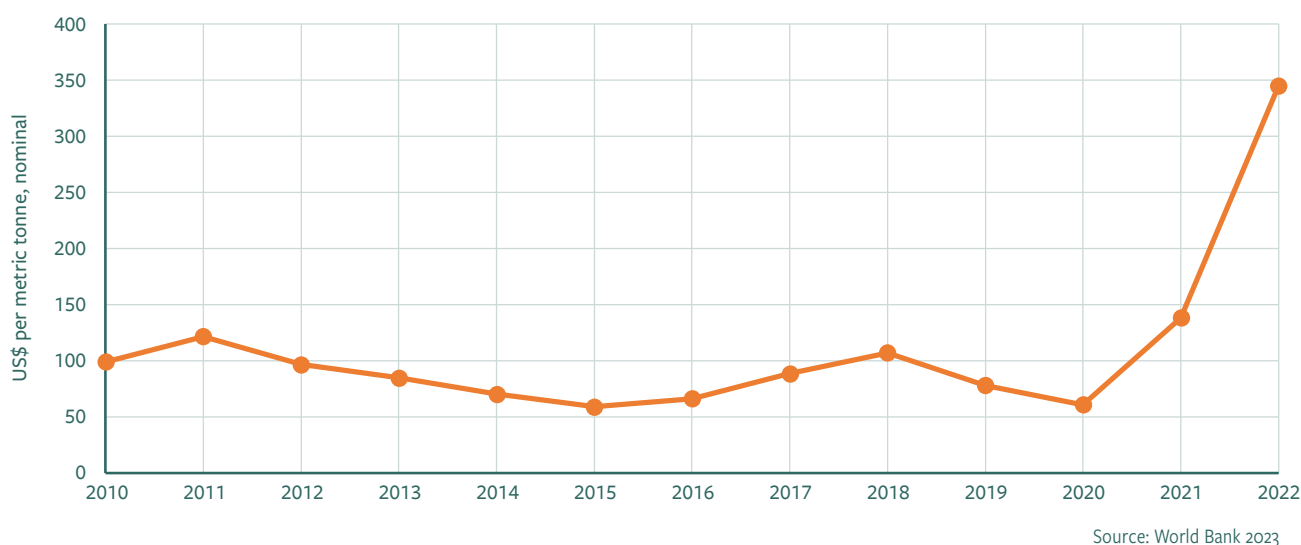


Figure 10: Coal price (Australian coal) 2010 – 2022



Bilateral beef trade

In both the EU and Canada, agricultural methane emissions continue to be largely unregulated, despite the fact that methane is among the most potent greenhouse gases, believed to be responsible for one third of global GHG emissions. As methane is a natural byproduct of the digestive process of ruminants, also known as enteric fermentation, the livestock sector accounts for a significant share of total methane emissions.⁹ Yet over the last decades, both partners largely failed to make any significant progress in reducing the GHG emissions of their agricultural and livestock sectors, with

enteric fermentation accounting for almost half of EU and Canadian agricultural emissions (Figures 11 and 12).

Despite this failure, CETA does not include any concrete commitments tackling the livestock sector’s contribution to climate change. Quite the opposite in fact – the agreement aims to increase trade in beef, which is responsible for the largest share of agricultural methane emissions. The EU, e.g., grants Canadian exporters two duty-free tariff rate quotas for fresh and chilled, as well as frozen, beef.¹⁰ Although these

Figure 11: Canada: Share of enteric fermentation in agricultural emissions

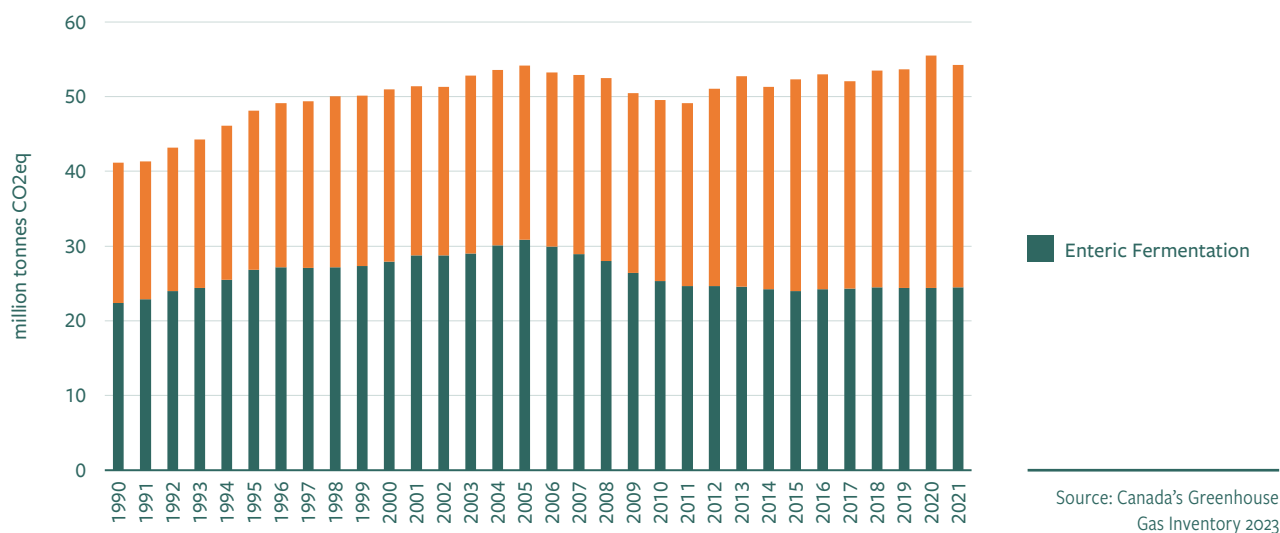
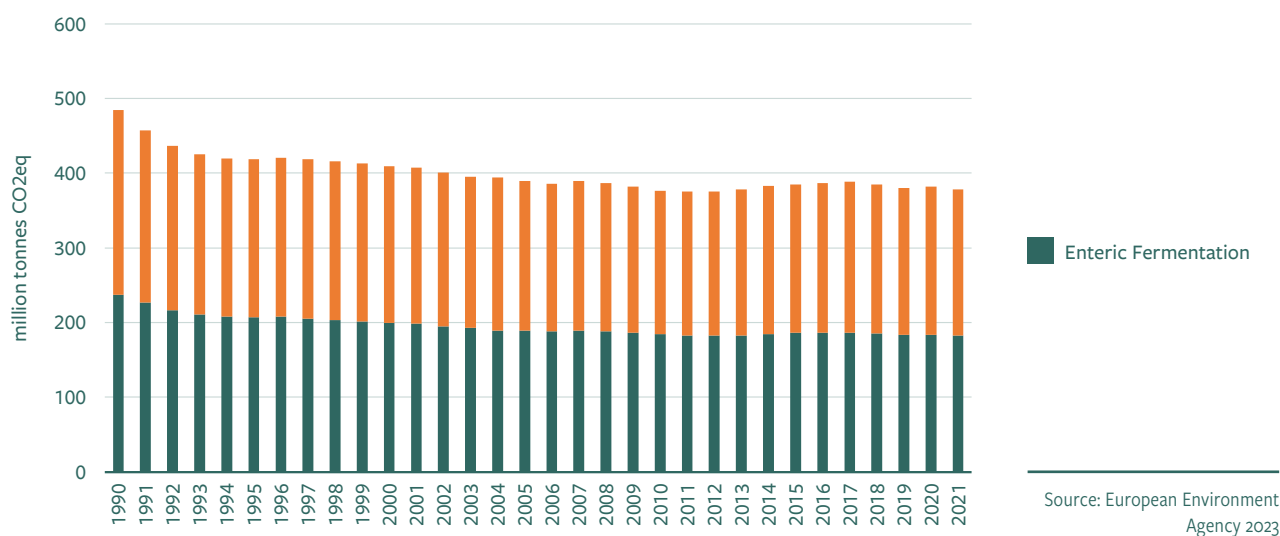


Figure 12: EU: Share of enteric fermentation in agricultural emissions



quotas have only been used minimally so far, EU import of beef from Canada has nevertheless risen sharply since CETA's implementation (Figure 13).¹¹

Canada also cut its import tariff on EU beef, from 26.5% to 0%, through CETA. This move bolstered EU beef exports to Canada – in particular frozen beef, which registered a big jump, especially since 2020. Before CETA, EU beef exports to Canada were largely non-existent (Figure 14).

A recent EU Commission report celebrates this development, maintaining that ‘the EU is exporting more beef to Canada than vice versa with an impressive increase in European exports of frozen beef’.¹² But when the associated methane emissions are taken into account, the European success in increasing its beef exports appears to be a rather questionable achievement, undermining the EU's goal of reducing its GHG emissions.

Figure 13: EU beef imports from Canada 2010 – 2022

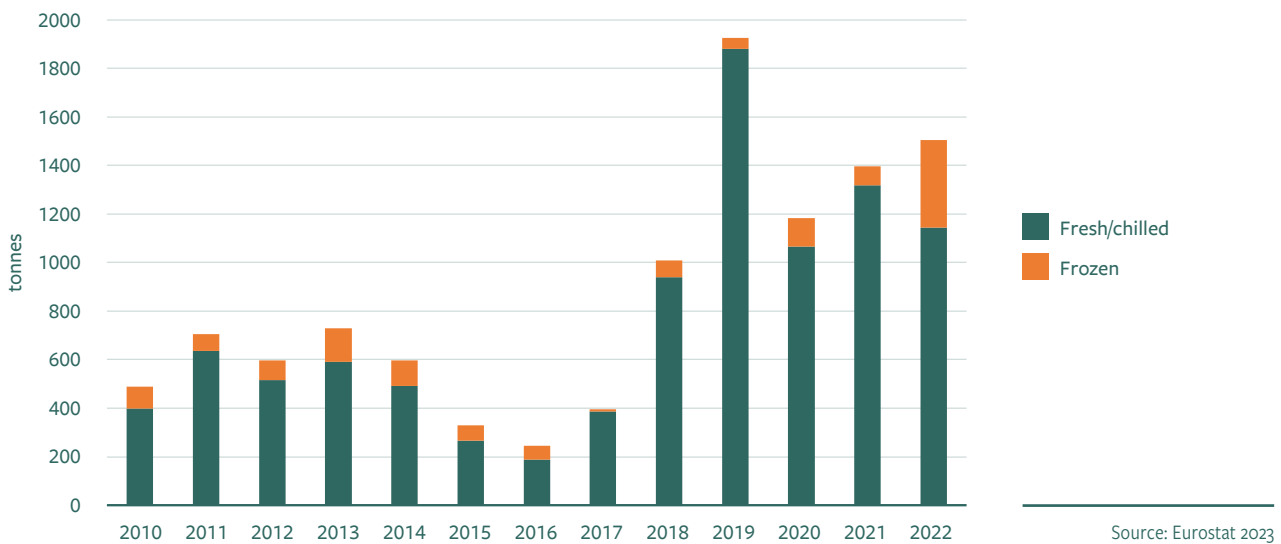
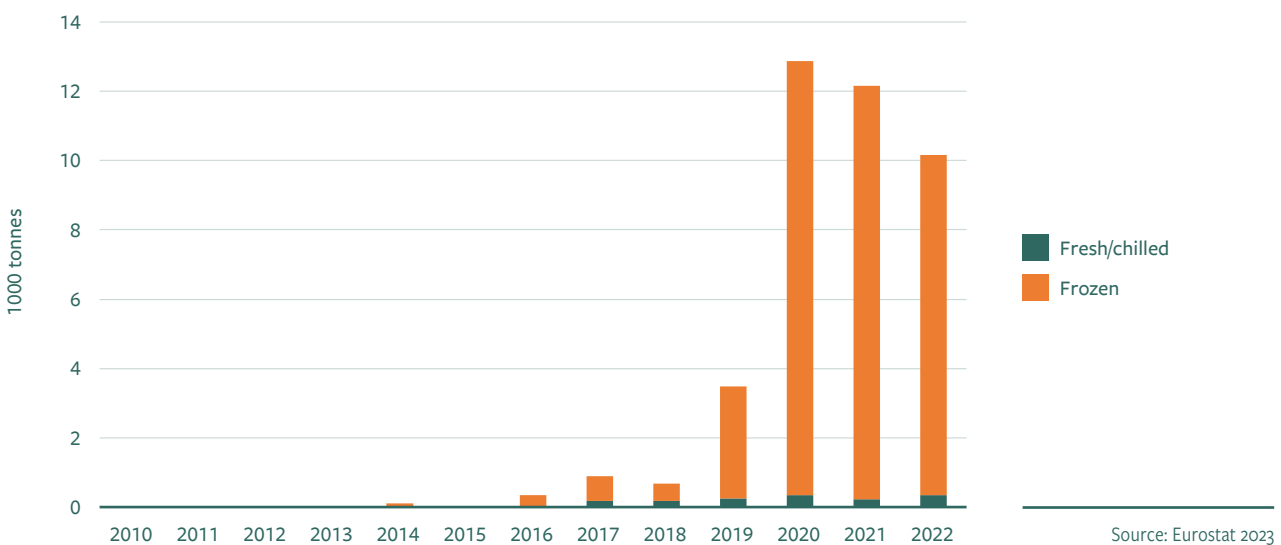


Figure 14: EU beef exports to Canada 2010 – 2022



Rapeseed and soya bean imports from Canada

Closely linked to the livestock industry is the Euro-Canadian trade in oilseeds used for animal feed, especially soya beans and rapeseed. Given the EU's sustained deficit of protein feed, soybeans, rapeseed and other protein-rich oilseeds have been tariff-free in the EU for many decades. Nevertheless, a truly progressive trade agreement would have included targeted provisions minimising the harmful environmental effects of soybean and rapeseed monocultures in Canada. Such commitments, however, are missing in the EU-Canada trade agreement.

Since CETA's provisional application in 2017, EU soybean imports from Canada saw only a modest increase, especially in value terms. EU rapeseed imports, however, grew considerably both in volume and value, particularly in 2020 where they reached nearly €1 billion (Figure 15).

About 95 percent of the rapeseed and 60 percent of the soya plants grown in Canada are genetically modified (GM). These plants are engineered to withstand being sprayed with herbicides such as glyphosate, glufosinate, 2,4-D or dicamba.¹³ In Canada, the use of herbicides has increased significantly over the last 15 years. 2017 was the year when the largest amount of herbicides were deployed so far: about 75,000 tonnes (Figure 16).

The potential negative impacts of these GM crops and the herbicides used to grow them is very significant – including biodiversity loss, soil erosion, water pollution and numerous health threats. In 2015, the World Health Organization classified glyphosate, the most commonly used synthetic herbicide, as probably carcinogenic.¹⁴

Moreover, the production, transportation and application of herbicides results in significant GHG emissions. Additional emissions are caused by the herbicides released into the environment and their interaction with the soil and atmosphere.¹⁵ Despite these issues, CETA does not include any concrete mitigation measures to tackle the risks of increasing rapeseed and soybean trade. Even worse, EU regulations setting maximum residue levels for pesticides in food imports are regularly questioned by Canadian officials, at meetings of CETA's Sanitary and Phytosanitary Committee (see Chapter 6).



Figure 15: EU soya beans & rapeseed imports from Canada (volume and value)

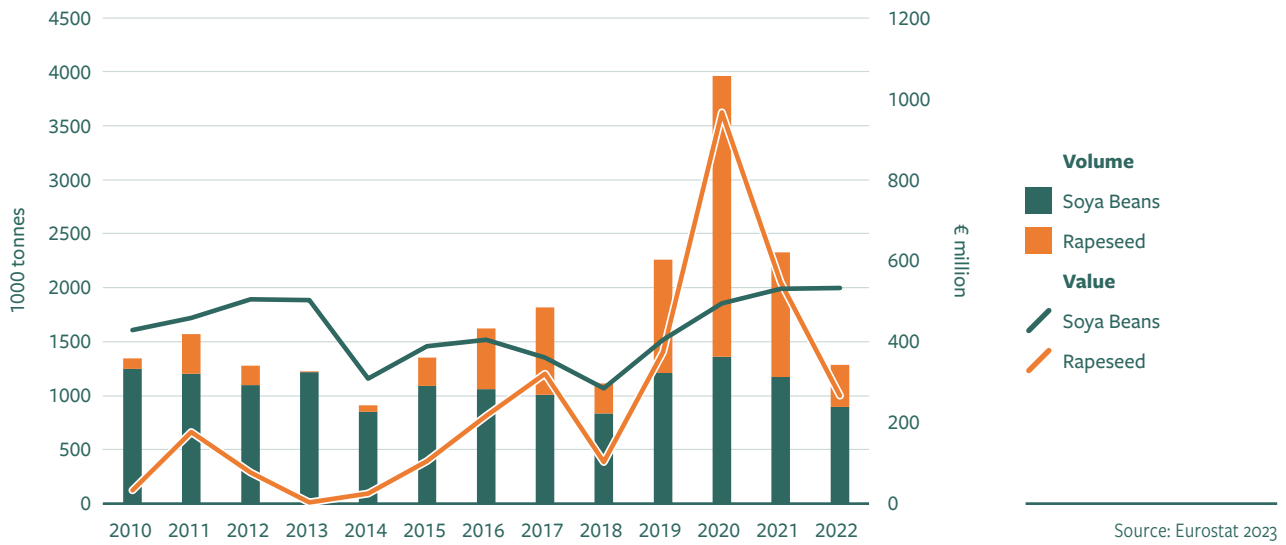


Figure 16: Herbicide use in Canada 2000 – 2021

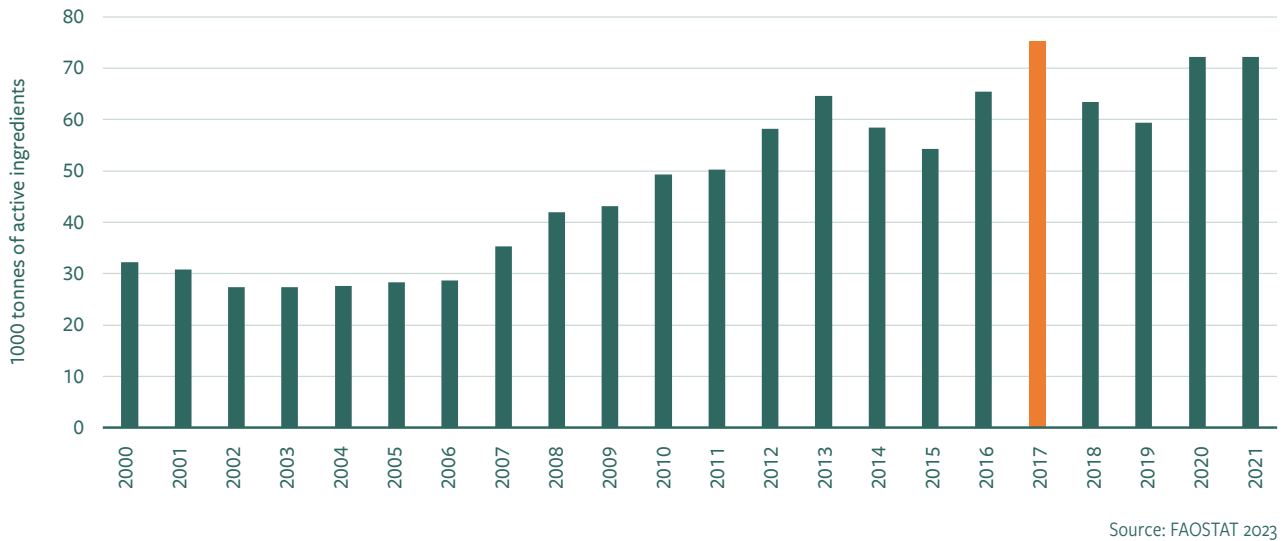


Photo: James Baltz / Unsplash.com

Bilateral trade in forest products

CETA's chapter on trade and environment contains a provision committing the parties to 'encourage trade in forest products from sustainability managed forests'.¹⁶ But while the majority of Canada's vast forests are indeed under different forms of management, this is not being done in a sustainable fashion. As a consequence, since 2001, Canada's managed forests turned from being a carbon sink to instead becoming a huge source of carbon emissions, with industrial logging and wildfires among the most significant issues. Industrial logging in particular has released far more carbon dioxide than could have been absorbed by growing trees.¹⁷

Despite these threats to the environmental integrity of Canada's forests, CETA aims to increase EU-Canada timber trade. While the majority of forest products were already duty-free in the EU, CETA eliminated the remaining tariffs on Canada's timber exports. The agreement cut tariffs, for instance, on fibreboard, plywood as well as maple wood, obtained from Canada's iconic maple tree.¹⁸

Before CETA, EU imports of forest products from Canada were on a descending path. Yet since its provisional application, there has been a turnaround. With the exception of 2019, European imports of Canadian cork and wood achieved higher levels than in 2017. In monetary terms, this upswing has been even more pronounced, with the import value in 2022 reaching levels last seen ten years ago (Figure 17).

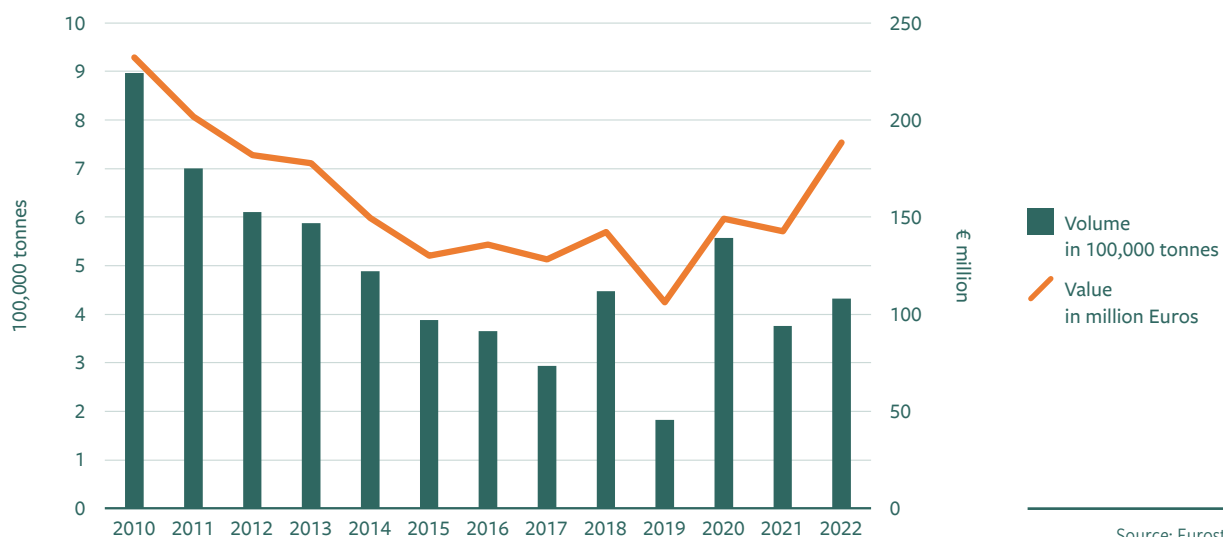
While Canada's timber exports reversed their decline since CETA's implementation, equivalent EU exports to Canada experienced an even sharper increase compared to the period preceding the agreement. The surge in exported quantities of cork and wood in fact began in 2016, but the increase measured in Euro was particularly pronounced in the last two years (Figure 18).

The EU's marked increase in timber exports to Canada occurs against the background of accelerated forest loss in Europe as well. Satellite data indicates that logging may have reached unsustainable levels in countries like Sweden and Finland. Increased harvesting due to growing demand is also weakening European forests' capacity to absorb carbon dioxide, thereby undermining the EU's ability to achieve its climate targets.¹⁹

Indeed, both partner's forest land – i.e. the entire area of natural and managed forests – is suffering from a decrease in the ability to remove carbon dioxide, mainly due to high harvest rates. In Canada, this process already started 20 years ago (Figure 19).²⁰ In the EU, the carbon removal capacity of forest land has been constantly shrinking for the last 10 years (Figure 20).²¹

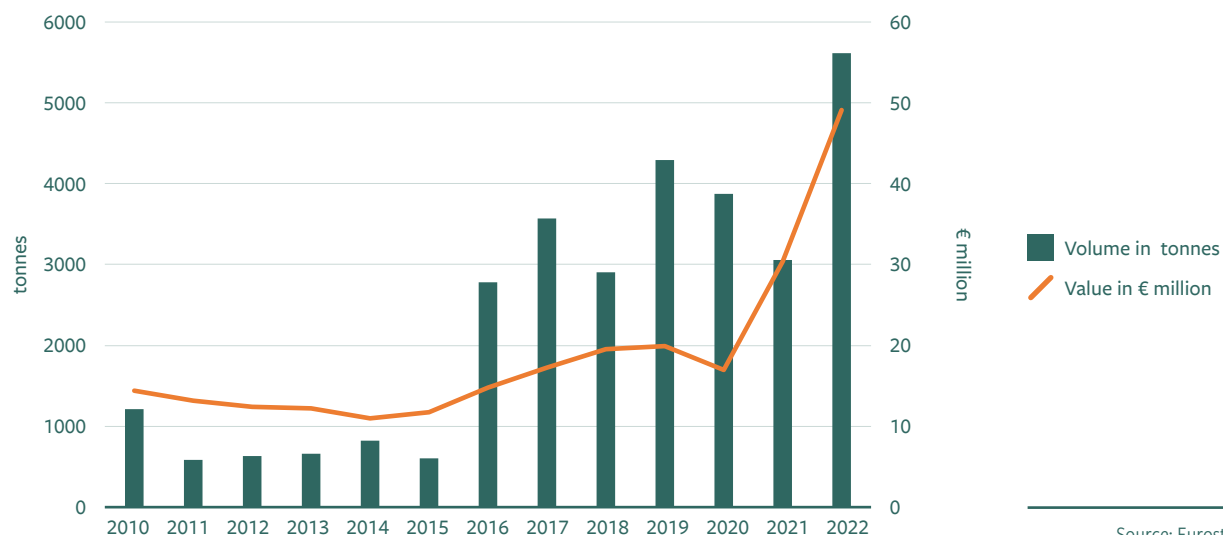
Against this background, CETA's removal of the remaining timber tariffs and the subsequent increase of transatlantic trade flows will likely put additional pressure on European and Canadian forests, weakening their absorptive capacities even further. Although this risk was well-known to EU and Canadian trade negotiators, the agreement does not provide for any safeguards protecting forests in their role as carbon sinks against growing international demand for timber. Even worse, minutes of the debates in the CETA committee on trade in goods and the bilateral dialogue on forest products reveal that even progressive measures such as the EU's deforestation regulation are being challenged – Canadian officials repeatedly criticised the regulation for jeopardising Canadian wood exports to the EU (see Chapter 6).

Figure 17: EU cork & wood import from Canada 2010 – 2022 (volume and value)



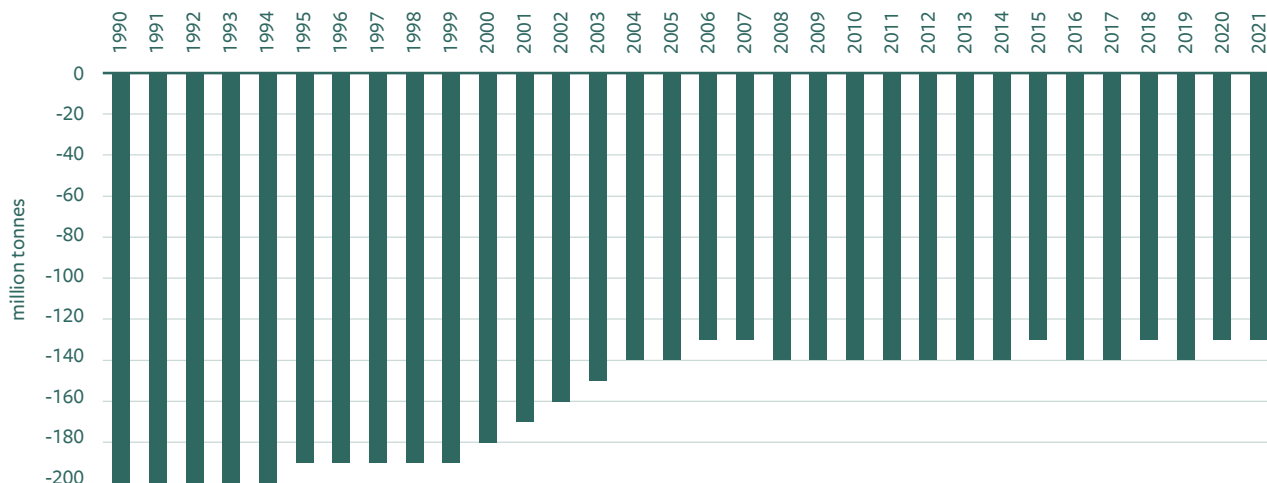
Source: Eurostat 2023

Figure 18: EU cork & wood export to Canada 2010 – 2022 (volume and value)



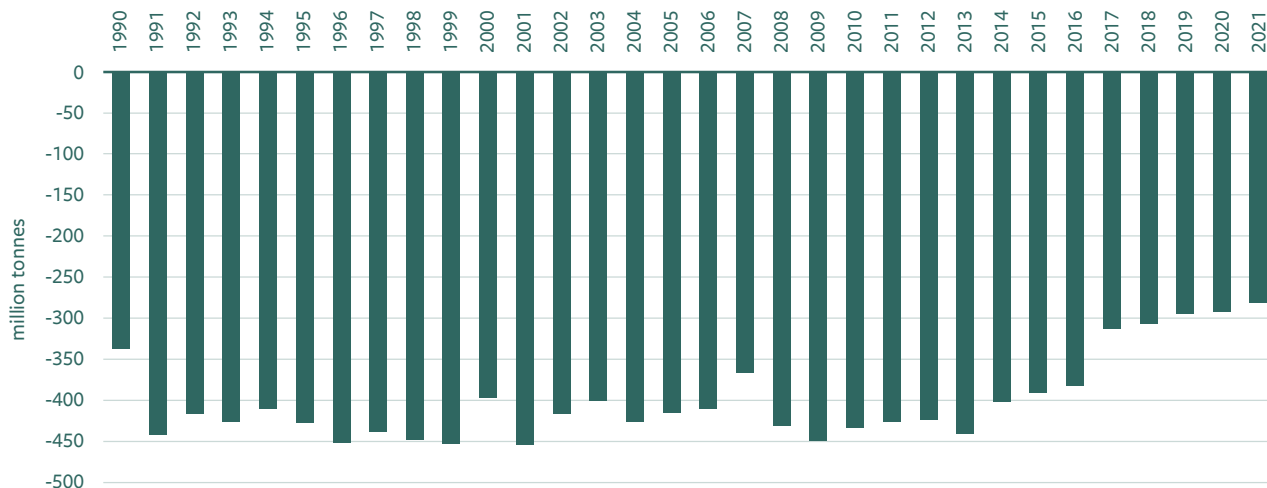
Source: Eurostat 2023

Figure 19: Canada's forest land: removal of CO₂eq.

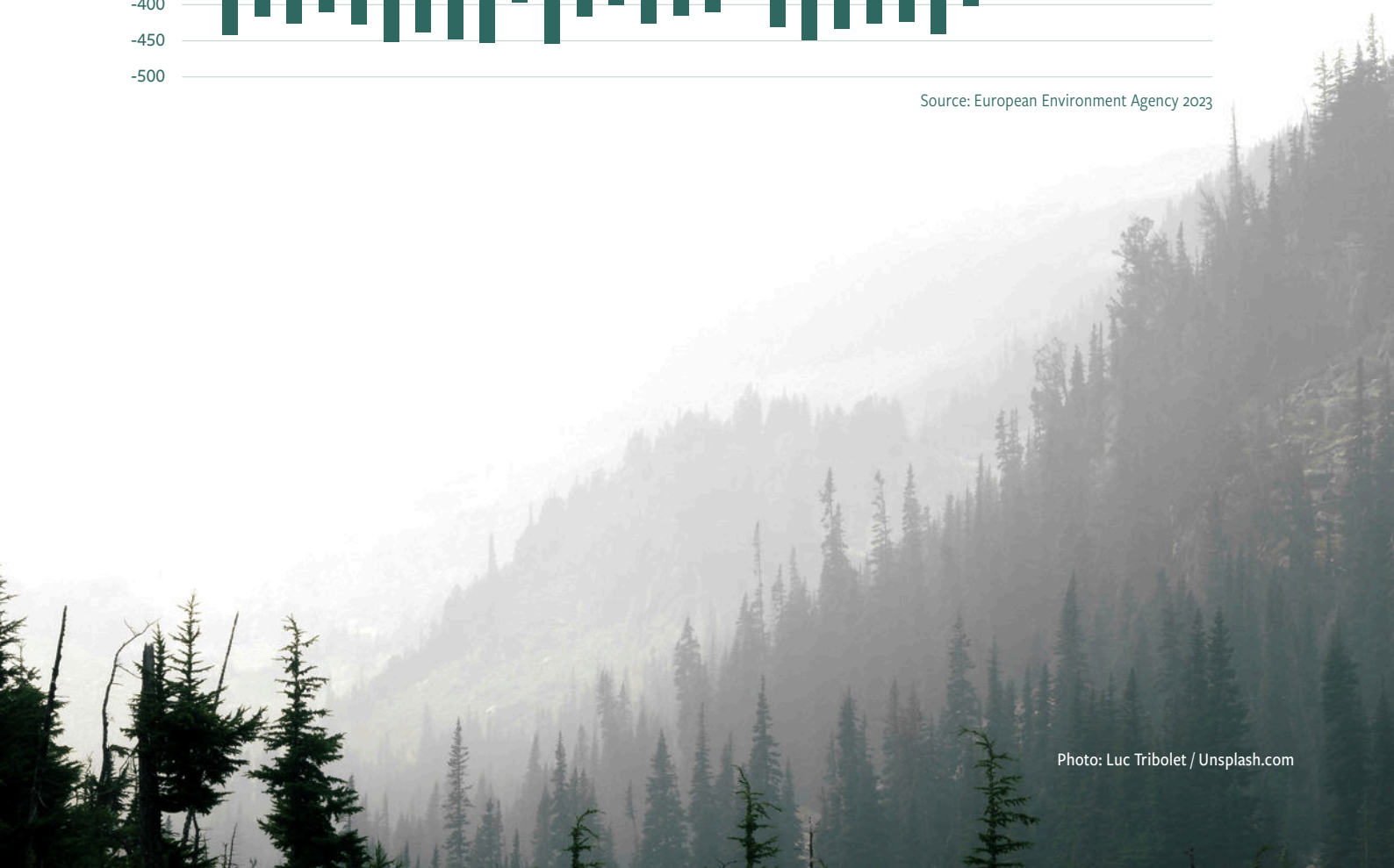


Source: Canada's Official Greenhouse Gas Inventory 2023

Figure 20: EU forest land: removal of CO₂eq.



Source: European Environment Agency 2023



Euro-Canadian plastics trade

The European chemical industry is a huge contributor to climate change, as well as other environmental damage such as air and water pollution and species extinction. The petrochemical industry and its plastics production is among the subsectors placing the highest burden on the environment, with plastic waste polluting oceans only one of the most visible impacts. It is estimated that current fossil-based plastics, i.e. polymers derived from fossil fuels will claim 15 percent of humanity's remaining carbon budget by 2050. Despite the clear risks posed by these polymers, plastics demand is expected to double by 2050.²²

As the world's biggest exporter and importer of plastics, the EU bears great responsibility for this development.²³ Yet CETA's market access commitments are fuelling increased plastics demand by eliminating tariffs on chemicals and plastics products of up to 6.5 percent.²⁴

Since CETA's provisional application, the value of EU plastics exports to Canada has risen substantially, especially in the last two years, gener-

ating a sizeable surplus for the EU. In contrast, Canada's plastics exports saw a more modest increase, which nevertheless accelerated in 2022 (Figure 21).

However, it is important to note that the data in the Eurostat database covers only part of the plastics trade, limited to products under Chapter 39 of the Harmonized System (HS), the product classification administered by the World Customs Organization. Experts at the UN-Conference for Trade and Development (UNCTAD) therefore worked to develop a database capturing the breadth of plastics trade, including other chapters of the Harmonized System, and estimates of so-called hidden plastics flows. These hidden flows include, for instance, plastic products used for packaging (e.g. pre-packaged food) and the huge volume of plastics embedded in manufactured goods – from television sets to cars. The database also provides a breakdown of traded products along different stages of the plastics lifecycle.²⁵

Figure 21: EU plastics trade with Canada 2010 – 2022 (HS Chapter 39)

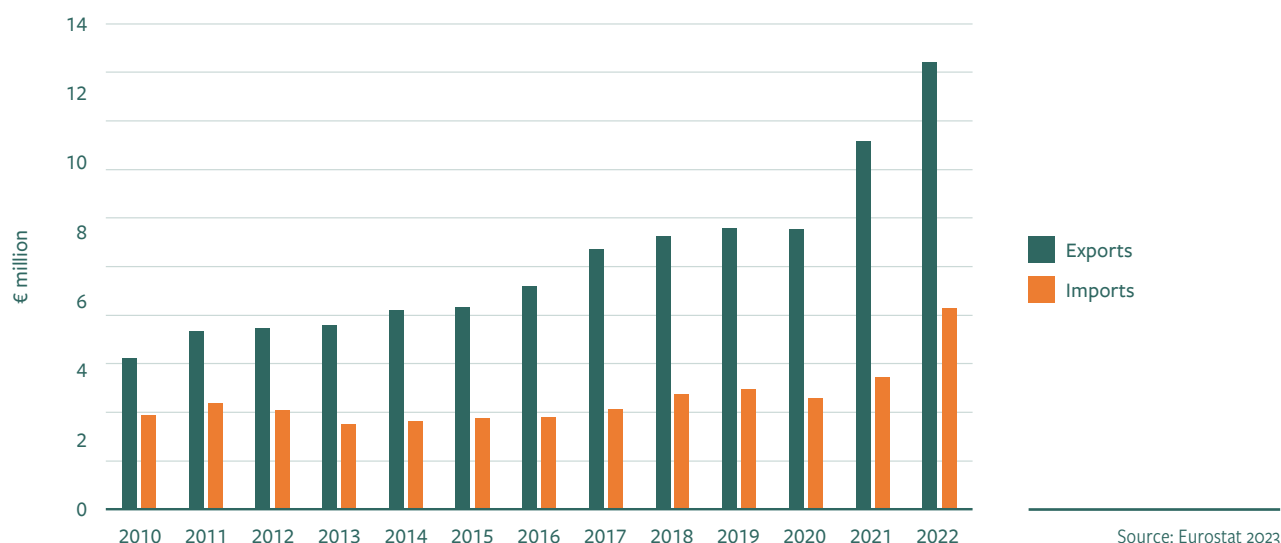




Photo: Thomas Kohler / Flickr.com

The EU’s growing plastics exports to Canada mainly consist of primary, intermediate and final products (Figure 22). A particular cause for concern is the significant share of primary plastics such as resin pellets and synthetic fibres. Most of the resin pellets are composed of microplastics, many of which are being released into the environment. These microplastics do not biodegrade, accumulate in animals and humans, and poison terrestrial and marine ecosystems as well as food and drinking water.²⁶ In addition, plastics embedded in the EU’s final goods exported to Canada, such as cars

and electronic goods, also pose environmental risks, as only a small fraction of these components are recycled.

The EU is the world’s biggest exporter of some of the plastic products that are most damaging to the environment.²⁷ This is reflected in the EU’s growing exports of plastic packaging to Canada, which saw a particularly strong increase from 2019 – 2021 (Figure 23). Most plastic packaging is single use and difficult to recycle because it is contaminated, combined with non-recyclable materials or contains toxic materials.²⁸

Figure 22: Composition of EU plastics exports to Canada 2010 – 2021

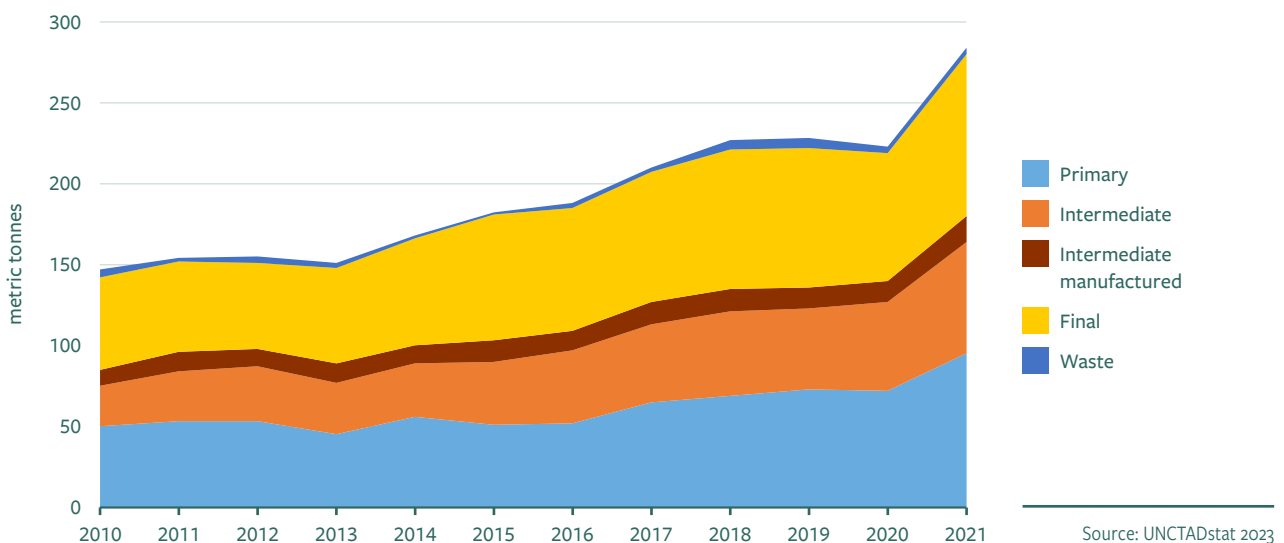


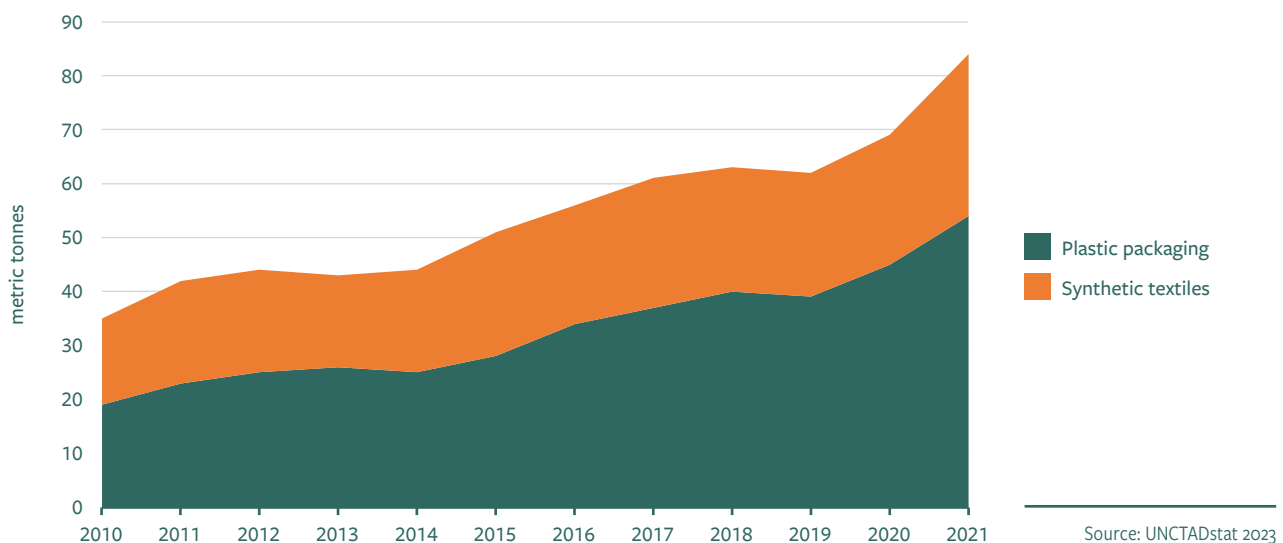


Photo: Catherine Sheila / Pexels.com

Further environmental risks result from the EU’s growing export of synthetic fibres such as polyester and nylon, which are used to produce synthetic textiles (Figure 23). The production of these synthetic fibres requires large amounts of energy and is thus a huge contributor to climate change without the full decarbonisation of the energy system. Environmental damage also occurs when these fibres are washed, dried and ironed. These risks are compounded by micro-plastics being shed throughout the whole life-cycle of synthetic textiles – from the manufacturing of fibres, through their transportation and use, as well as their final disposal.²⁹

Despite the EU’s huge responsibility for global plastics pollution, CETA lacks any concrete commitments to mitigate the risks associated with the growth of plastics production and trade. The agreement even intensifies these risks by eliminating the remaining tariffs on several plastics products.

Figure 23: EU harmful plastics exports to Canada 2010 – 2021



Putting trade of ‘green goods’ into perspective

In Article 24.9 of CETA’s trade and environment chapter, the parties commit to “facilitate and promote trade and investment in environmental goods and services”. Trade in environmental or ‘green goods’ has emerged as one of the key areas the Commission emphasise while trying to back up the green credentials of trade agreements such as CETA.

According to a Chief Economist note published by the Commission, bilateral trade in environmental goods between the EU and Canada increased from €4.7 billion to €5.6 billion in the four year periods before and after CETA’s provisional application.³⁰ However, during this entire period, the share of green goods in total bilateral trade did not surpass 10 percent (Figure 24). It is therefore very difficult to see how green goods could be able to offset the climate impact of the 90 percent of non-green, often highly emissions-intensive goods exchanged between the EU and Canada.

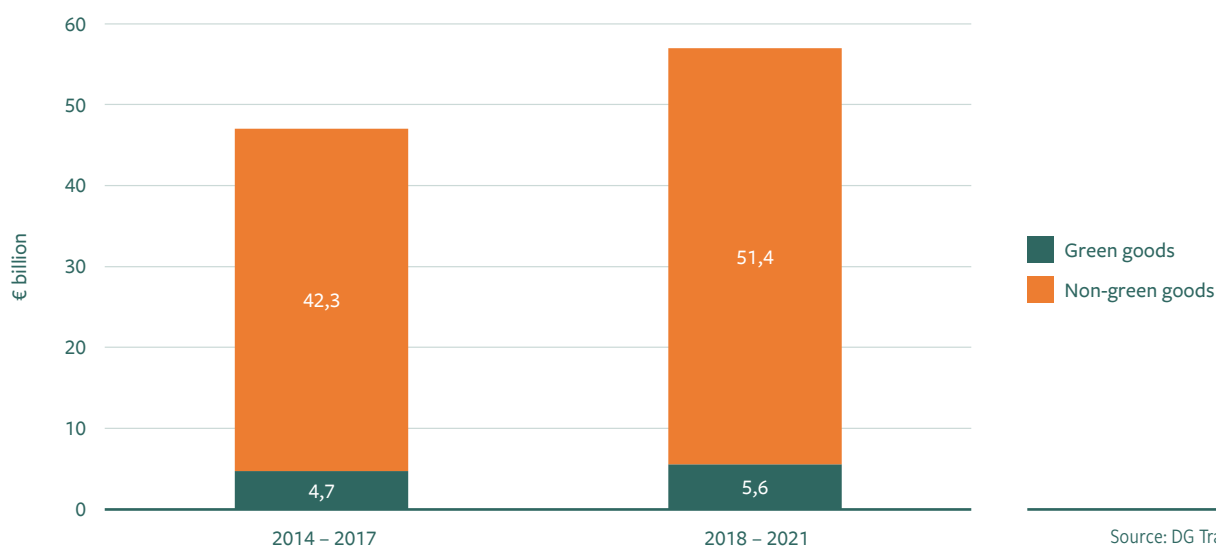
It should thus be clear that any serious environmental evaluation of trade agreements such as CETA must focus on the overwhelming share of non-green polluting products being liberalised or left unregulated. The public should not be

tricked into believing that small shares of environmental goods being traded would turn largely harmful trade deals into green ones.

Moreover, the environmental benefits of many of the goods dubbed ‘environmentally friendly’ or ‘green’ are also contested. This problem is compounded by the fact that the Commission refers to a list of over 260 ‘green goods’ used during the negotiations of the WTO Environmental Goods Agreement (EGA), which collapsed in December 2016. This EGA list, however, is neither publically available nor officially accepted. It was only one of several competing lists that were circulated during the WTO negotiations.

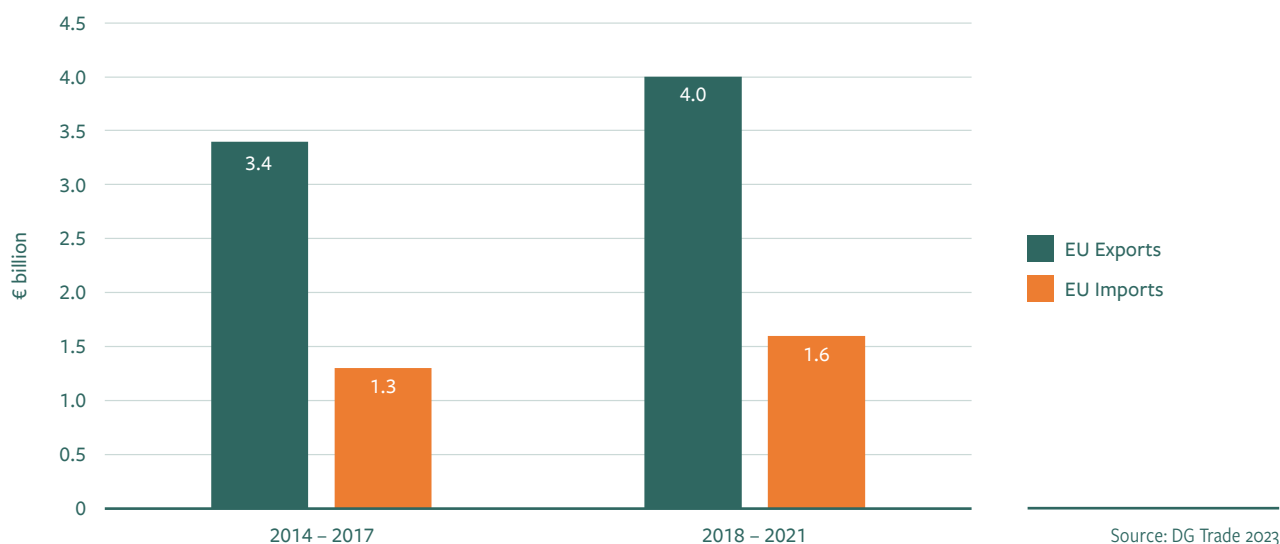
One of the reasons why negotiators failed to agree on a common list of environmental goods was that many of the proposed items have a dual use. For instance, pipes, tubes and tanks may be used to transport fossil fuels as well as green hydrogen to supply hard-to-abate industry sectors with renewable energy.³¹ To identify the truly environmentally friendly goods, negotiators would have needed a highly disaggregated classification which is internationally accepted. But unfortunately, such a classification does not

Figure 24: Share of environmental goods in total goods trade, pre- and post-CETA



Source: DG Trade 2023

Figure 25: EU trade in environmental goods with Canada, pre- and post-CETA



yet exist. Instead, in order to assemble their respective lists, negotiators at the WTO used the Harmonized System (HS) classification, with HS codes at the six-digit level. Yet, to precisely single out true green goods, disaggregation up to the 8-digit or 10-digit level of HS codes would have been required.³²

In addition, green goods may still result in sizeable GHG emissions, as their environmental benefits may occur only at particular stages of their lifecycle. While the use or application of certain green goods can contribute to climate mitigation, their production – including the required raw materials and intermediate products – may still be very emissions-intensive. This is particularly true for manufacturing processes for basic metals and machinery, which continue to be highly dependent on fossil fuels for their energy supply. As a consequence, increased trade of supposedly ‘green’ goods can still have a negative climate impact, as long as only individual stages of their lifecycle are being decarbonised.

It is also important to note that the EU has a huge surplus in its environmental goods trade with Canada (Figure 25). This once again raises the question of whether a truly green trade agreement should not also include targeted measures supporting the production of environmentally friendly goods. And this should certainly be a particular responsibility for the partner that has stronger capacity in the green goods market – the EU in the case of CETA. But beyond the commitment to liberalise environmental goods, CETA does not foresee any concrete measures to support their production.

In a nutshell

The analysis of the variations in trade flows reveals that bilateral trade in numerous products harmful for the climate did indeed increase since CETA's implementation. This is true for the most important mineral raw material exported from Canada to the EU – iron ore – as well as fossil fuels such as crude oil and hard coal. In addition to accelerating climate change, the production and consumption of these minerals and fuels causes numerous other environmental impacts – such as air and water pollution, biodiversity loss and land use changes.

The liberalisation of agricultural products adds to the negative climate impact of CETA. The quotas and tariff preferences offered for animal products such as dairy and beef pose particular risks, given that both partners largely failed to make any significant progress in reducing the GHG emissions of their livestock sectors, with methane the most harmful of the greenhouse gases emitted. Since CETA's implementation, both partners' beef exports have risen sharply.

Closely linked to the livestock industry is the Euro-Canadian trade in oilseeds used for animal feed, especially soya beans and rapeseed. While EU soy bean imports from Canada saw a rather modest increase, EU rapeseed imports, how-

ever, grew considerably since CETA's application. The large majority of rapeseed and soya plants grown in Canada are genetically modified to withstand being sprayed with herbicides. The use of these herbicides has increased substantially over the last 15 years causing biodiversity loss and significant GHG emissions.

Trade in forest products also saw an increase since CETA's implementation. While EU wood imports from Canada reversed the decline they had experienced before the agreement, EU exports to Canada were even more pronounced. The bilateral increase in timber trade occurs against the background of accelerated forest loss in Canada and the EU as well. In both regions, forest land is suffering from a decrease in the ability to remove carbon dioxide, mainly due to high rates of industrial logging.

CETA's market access commitments in the chemical industry are also fuelling demand for goods harmful for the environment. For instance, since CETA's implementation, EU plastics exports to Canada have risen substantially, including particularly damaging products such as microplastics, plastic packaging and synthetic fibres. The production of these plastics requires large amounts of energy and is thus a huge contributor to climate change.



Photo: James Baltz / Unsplash.com

Another concern relates to the absence of targeted measures to mitigate the climate risks of trade in all these products. CETA does not link its trade preferences to concrete improvements in the production process of the sectors benefitting from the agreement. It also lacks concrete provisions to reduce or end trade in especially harmful products such as fossil fuels. Another glaring lacuna relates to technology transfer to facilitate the decarbonisation in the sectors which have been liberalised.

These failures cannot be compensated by the fact that trade in environmental goods saw a slight increase since CETA's implementation, given that the share of 'green' goods in total bilateral trade never surpassed the threshold of 10 percent. It is therefore difficult to see how 'green' goods should be able to offset the climate impact of the 90 percent non-green and emissions-intensive goods exchanged between the EU and Canada.

All these weaknesses point to perhaps the most basic failure of EU trade policy in relation to the climate crisis – the ongoing prioritisation of liberalisation over transformation. But as our analysis of CETA's implementation clearly shows, these priorities must be reversed. The transformation of the productive apparatus, the decarbonisation of goods traded internationally must take precedence over the dismantling of barriers to trade, in order to mitigate climate change. Only after the manufacturing of goods along their value chains has become climate-neutral, will it make sense to further liberalise markets for these particular products.



4 Rules, institutions, and decisions governing climate policy

It is worth noting that both Canada and the EU are no climate champions and have failed to excel in the area of climate protection. Canada is one of the world's biggest emitters of greenhouse gases, and scored poorly in the 2023 Climate Change Performance Index, ranking 58th out of 63 countries, making it one of the countries with the highest CO₂ emissions.³³ The EU – as the sum of its 27 member states – is placed only 19th among the group of countries that have implemented high levels of climate protection measures, a ranking which hardly evidences the region's aspirations to be a global climate leader.³⁴ Additionally, Canada prioritises other issues in trade negotiations, as demonstrated by the NAFTA 2.0 (United States-Mexico-Canada Agreement - USMCA) agreement. It is worth noting that the text of this agreement does not make any mention of climate protection measures.³⁵

The objective of this analysis is to examine the impact of CETA on the climate. Therefore, we aim to clarify the specific provisions enshrined in the agreement relating to climate policy. But which aspects of CETA are relevant to climate? It is crucial to remember that the complete agreement and its provisions affect the climate – including trade in goods, agreements on raw material or forest products, agriculture, sanitary and phytosanitary measures or (climate-friendly) procurement measures. Nevertheless, this section of the report chapter is dedicated to exploring the specific commitments in the sustainability section of CETA, which primarily aim to address climate concerns.



It is important to remember that the conclusion of the CETA negotiations coincided almost exactly with the adoption of the 2015 Paris Agreement on climate change, which has been ratified by both Canada and the EU. This serendipitous timing presented an opportunity for the parties involved to move beyond rhetoric and to agree binding provisions in CETA such that climate provisions would trump trade provisions in case of a conflict between the two. Sadly, this opportunity was not seized, and CETA's allusions to climate protection are inconsistent and weak.

CETA chapters 22 (Trade and Sustainable Development) and 24 (Environment) lack precise commitments to climate protection and fail to reference the Paris Agreement. One of the most precise sections, Article 24.12, regulates environmental cooperation:

The Parties recognise that enhanced cooperation is an important element to advance the objectives of this Chapter, and commit to cooperate on trade-related environmental issues of common interest, in areas such as:

[...] trade-related aspects of the current and future international climate change regime, as well as domestic climate policies and programmes relating to mitigation and adaptation, including issues relating to carbon markets, ways to address adverse effects of trade on climate, as well as means to promote energy efficiency and the development and deployment of low-carbon and other climate-friendly technologies;³⁶

Disappointingly, the chapter lacks specific commitments to climate protection measures, and fails to outline any consequences if the parties breach climate agreements or refuse to cooperate as expected.

The absence of such measures highlights the failure to respond to the requirements of ambitious climate protection. The agreement was subjected to significant criticism for its inadequacies in addressing the climate crisis, resulting in the incorporation of an extra

BOX 2

CETA and Paris Timelines

Overview of the timeline of the negotiations³⁷



“Joint Interpretative Instrument”³⁸ into the CETA text prior to signing. However, this text also failed to strengthen the imprecise statements in the overall trade agreement by including tangible trade-related climate protection measures. Instead, the document only contains the following phrasing:

*CETA [...] includes commitments to cooperate on trade-related environmental issues of common interest such as climate change where the implementation of the Paris Agreement will be an important shared responsibility for the European Union and its Member States and Canada.*³⁹

The CETA Joint Committee⁴⁰ did not publish a recommendation on climate protection until a year after provisional application of the agreement. This recommendation also lacks an enforcement mechanism and merely reiterates the commitments previously made by both the EU and Canada. It does not include any specific projects or measures, nor does it threaten sanctions in case of violations.⁴¹

BOX 3

The CETA Joint Committee

The Canadian Government describes the CETA Joint Committee as follows: “The CETA Agreement established special committees between the EU and Canada to determine how to develop, supplement or implement the agreement. The CETA Joint Committee is responsible for all matters relating to the implementation and interpretation of the CETA agreement. The committee is co-chaired by the Canadian Minister for Trade and the Member of the European Commission responsible for trade, or their designate. The CETA Joint Committee will review any issue relating to the implementation and interpretation of the agreement, or any other issue concerning trade and investment between the Parties.”⁴²

To read more on the powers and dangers of the CETA Committees, see Chapter 6.

Climate check: Sustainability Chapter

Chapters 22 (Trade and Sustainable Development), 23 (Trade and Labour), and 24 (Trade and Environment) of the CETA agreement deal explicitly with sustainable development.⁴³ These topics are separated from the rest of the agreement, and worryingly their exclusion from the dispute settlement mechanisms weakens the enforcement power for these important Chapters. They are also outdated as they do not follow the EU Commission’s new approach, reformed in 2022, of making its sustainability chapters sanctionable, although with the limitation “as a matter of last resort”.^{44, 45}

The chapters in question are characterised by weak, cautious language. The text refers to promoting sustainable development, as well as

“trade to promote environmental protection”. The chapters also include customary non-reduction clauses (23.4 and 24.5) wherein the parties commit not to weaken their current national labour and environmental protection legislation. However, the language employed is again weak, actually allowing for possible reductions. There is also no indication of the possibility of strengthening environmental protection standards or labour rights protections. The sustainability agreements predominantly reinforce pre-existing commitments and present scarcely any new aspects.

Implementation of sustainability provisions – only scratching the surface

The Sustainability Chapter is implemented by the Trade and Sustainable Development (TSD) Committee, made up of representatives from the European Commission and the Canadian government. Their role is to implement the Chapter's provisions, with a primary focus on advancing discussions on sustainability matters.

The committee convenes frequently, diligently pursuing a previously established work programme.⁴⁶ It regularly produces reports on its work (available on the Commission's website), and has made multiple recommendations to the Joint Committee concerning the agreement's progress. However, these endeavours are disappointingly lacklustre.

Shortly after CETA's provisional enforcement, the Joint Committee adopted the "Recommendation on Trade, Climate Action and the Paris Agreement" in September 2018.⁴⁷ This move was seemingly prompted by public criticism of there being inadequate climate consideration in the agreement. As a result of the Recommendation, the Committee on Trade and Sustainable Development established a biennial work programme to implement the recommendations.⁴⁸ The work programme comprises multiple cooperative areas. Thematically, the 2022-23 programme concentrates on the following areas:⁴⁹

- Facilitate discussions and collaboration on clean technologies and carbon pricing
- Monitor developments on Border Carbon Adjustments and organise further technical exchanges
- Share experience and best practice on developing and implementing a climate adaptation strategy – Consider organising an expert exchange on climate adaptation
- Cooperation on trade and climate at the World Trade Organisation

The primary focus of the Committee, disappointingly, is on exchanging knowledge, sharing experiences, monitoring progress, and sharing best practice. However there is no indication of the Committee implementing targeted climate protection measures or working to develop an agreement on trading climate-friendly technologies more efficiently. Additionally, the Committee has not argued for a limitation being placed on trade in climate-damaging products.

In terms of the potential for meaningful and progressive collaborative work on trade and sustainable development between Canada and the EU, sadly only the surface has been scratched. There is no sign of the necessary rethinking and re-orientation towards climate-friendly trade being prioritised.

Weakness in civil society participation mechanisms

The scope of civil society to contribute to enforcement is limited to participating in the so-called "Domestic Advisory Groups" (DAGs). These do involve civil society, but also industry. The DAGs can make recommendations for improvements to CETA, but they have no enforceability. A study by the Friedrich-Ebert-Foundation pointed out the weaknesses and limited possibilities of the DAGs as early as 2020.⁵⁰

The European Commission is aware of these shortcomings and is trying to bring about improvements. So far, however, these have not had a positive impact on the implementation of European trade agreements, including CETA.

Sustainable Development Chapter – a toothless tiger

One common critique of the sustainability chapter highlights the fact that the areas it covers are exempt from dispute resolution, unlike other sections of the agreement. The absence of robust enforcement measures in all of CETA's sustainable development provisions leaves them vulnerable to challenge and subversion. Additionally, there is limited scope to punish violations of environmental and labour laws. The EU Commission has acknowledged this problem, and decided 2022 to reform some of its future sustainability chapters, the so-called "TSD review". The model now incorporates the sanctions that civil society has long requested, which can be enforced if violations occur.⁵¹ Nonetheless, there is a caveat: the EU Commission will pursue the new approach only in future negotiations. As a result, it is not applicable to the EU-Canada agreement. This is surprising given that Canada has consistently indicated that it was open to negotiations regarding this matter, and expressed a clear interest in bolstering the sustainability chapter by adding scope to impose sanctions.

In April 2023, Green Member of European Parliament (MEP) Saskia Bricmont raised this issue in a Parliamentary Question to the Commission.⁵² She quoted from the minutes of the 2022 CETA Joint Committee meeting:

Canada expressed its enthusiasm regarding the outcome of the EU's TSD review [...]. However, Canada registered its disappointment with the EU's reluctance to apply its new TSD enforceability approach to CETA (i.e., fines and/or sanctions for breaches of obligations). Canada asked that the EU reconsider its stance and agree to find a way to make the CETA labour and environment chapters enforceable.

To avoid reopening the text of the Agreement, Canada suggested that there were flexible options to achieve this goal and that it remained open to discussing these further with the EU under the TSD Committee.⁵³

The response from the European Commission was unambiguous:

The sustainability commitments are binding and enforceable. CETA provides for a dedicated dispute mechanism. Yet, neither of the parties, nor any other civil society actors have identified shortcomings in the implementation of, or compliance with the trade and sustainability development (TSD) commitments under the TSD chapter. Canada's request to add trade remedies to the commitments would require re-opening of at least parts of CETA while awaiting ratification by several Member States.⁵⁴

The European Commission argues that the current provisions in the chapter are legally binding and enforceable. However, the trade and sustainable development sections of text are merely declarations of intent and not clear commitments, as previously shown. At the same time they would be almost impossible to enforce should a conflict arise. The refusal of the Commission to make the chapter sanctionable, despite Canada's willingness to do so and the coherence with the EU's current approach, suggests a lack of genuine interest in advancing climate protection through the CETA agreement.

In a nutshell

*CETA, the trade agreement between the EU and Canada, threatens the state's ability to act and ambitious climate policy.*⁵⁵

– Hans Böckler Foundation

Both Canada and the EU are no climate champions and in fact are criticized for their inadequate climate performance. CETA's sustainability chapters, specifically Chapters 22 and 24, lack precise commitments to climate protection and do not reference the Paris Agreement. Despite the opportunity to incorporate strong climate provisions during the negotiations coinciding with the adoption of the Paris Agreement, CETA's allusions to climate protection are deemed inconsistent and weak.

When it comes to the implementation of sustainability provisions through the Trade and Sustainable Development Committee, its lackluster efforts in enforcing meaningful climate protection measures is striking. The role of civil society in enforcing these provisions is limited, and the sustainability chapter is exempt from dispute resolution, leaving it vulnerable to challenge and subversion.

Despite Canada's willingness to discuss making the CETA labour and environment chapters enforceable, the European Commission maintains that existing provisions are binding and enforceable, even though they are criticized for lacking clarity and enforceability.

Overall, the CETA agreement shows a lack of genuine interest in advancing climate protection through the agreement.

5

Committees and bilateral dialogues established under CETA

Trade agreements, standards, and climate protection are intricately linked, shaping and influencing one another in significant ways. Trade agreements often involve the harmonisation of standards. In the context of climate protection, this harmonisation can – in the best case – incorporate eco-friendly practices, promoting sustainability across borders. Additionally, trade agreements could facilitate the transfer of green technology, enhancing global capabilities to address climate challenges. Preferences for environmentally friendly products in trade agreements create market incentives for businesses to adopt climate-friendly practices. Moreover, trade agreements could also provide a platform for global coordination to combat climate change, fostering collaboration and a unified approach to environmental sustainability. Unfortunately in reality this is not the case (yet) in global trade policy.

The CETA is one of the “new generation” trade agreements. The focus of these new FTAs is not only/mostly on reducing tariffs, but on eliminating so-called non-tariff barriers to trade. These include the harmonisation of technical standards, but also regulations in areas such as consumer and environmental protection.

In addition, the agreement is seen as a “living agreement” that is constantly evolving. In this context, the so-called “Committees”, play a key role. Almost every chapter of the agreement is as-

signed to a specific committee. These specialised committees report to the overall “CETA Joint Committee”. The committees are composed of representatives of the parties, usually Canada and the Commission. They develop the trade agreement during its lifetime, and can even amend it and take important decisions, without the involvement of the European Parliament.

For example, the Sanitary and Phytosanitary (SPS) Committee⁵⁶ could amend the Annex on hygiene controls for meat to recognise the equivalence of a lower level and a higher level of hygiene control, as is the case in the gap in levels of protection that exist between Canada and Europe. Such a decision in the SPS Committee would have to be submitted to the European Council of Ministers for a decision.⁵⁷ The Council could then adopt the proposal without the involvement of the European Parliament. This represents a serious democratic deficit. The European Parliament cannot reverse such a decision, despite being excluded from the process of it being made. Once product standards or procedures have been recognised as equivalent, this decision can only be changed through a lengthy procedure based on the agreement of both contracting parties.⁵⁸ In the case of hygiene controls for meat, such a change would potentially be dangerous for EU consumers. It would certainly increase the trade in beef, which in turn would increase pressure on the climate (see Chapter 3).

BOX 4

CETA Committees and Dialogues⁵⁹

- CETA Joint Committee
- Regulatory Cooperation Forum
- Civil Society Forum
- Bilateral Dialogues:
 - Raw Materials
 - Forest Products
 - Biotech Market Access Issues
 - Motor Vehicle Regulations
 - Electronic Commerce
 - Enhanced Cooperation on science, technology, research and innovation
- CETA Specialised Committees:
 - Sanitary and Phytosanitary Measures
 - Trade in Goods
 - Geographical Indications
 - Agriculture
 - Financial Services
 - Wines and Spirits
 - Trade and Sustainable Development
 - Joint Sectoral Group on Pharmaceuticals
 - Joint Customs Cooperation
 - Government Procurement
 - Mutual Recognition of Professional Qualifications
 - Services and Investment

Discussions related to climate are underway in various CETA committees. The Committee on Sustainable Development is of course involved, as outlined earlier. However, as well as that Committee's ongoing work programme, agreements relevant to climate could be made in the Bilateral Dialogues on Raw Materials and Forest Products, the SPS, the Trade in Goods and Agriculture Committees, and the Regulatory Cooperation Forum. Therefore, examining the working approaches and probable outcomes of these committees is worthwhile.

Freezing, or even weakening, protection standards

The mutual recognition of standards and procedures as equivalent is an important measure in CETA (and in other modern trade agreements) for the approximation of technical standards, but also of consumer, climate and environmental protection rules. The purpose of approximation is to remove so-called non-tariff barriers to trade that exist because of different regulations among the parties to the agreement. The mutual recognition procedure can lead to the freezing of standards, but also to their deterioration. The latter occurs when the higher standard of one party is recognised as equivalent to a lower standard of the other party. As discussed above, the CETA Joint Committee can decide on the recognition of equivalence like this.⁶⁰

The special significance of such equivalence recognition lies in the international nature of the agreement. When standards of protection are recognised as equivalent under CETA, they become subject to international law. As an international treaty, CETA then determines what can still be regulated in European secondary law and national law with regard to imports from the country of the contracting party. This means that rules and regulations of the EU and its member states that contradict the CETA agreement are automatically in breach of international law. This could thus have serious consequences in a wide range of areas of daily life, directly affecting citizens, consumers, workers and businesses.

The decisions of the CETA committee could lead to the freezing of EU standards, which would affect the EU's autonomy. This could happen, for example, if the EU wanted to raise its safety standards for pesticides or to introduce new regulation that could affect Canadian exports.⁶¹ After mutual recognition of pesticide standards, it would no longer be possible for the EU to raise these standards unilaterally without a consultation process with Canada.

The standard could no longer be unilaterally revoked, except in violation of international law.⁶²

In an exchange of letters with the consumer protection organisation Foodwatch, the EU Commission was forced to admit that provisions from the SPS chapter, such as hygiene controls or pesticide agreements, are subject to state-to-state dispute settlement.⁶³ This means that if a disagreement occurs during this consultation process, the CETA dispute settlement body could impose sanctions for unilaterally raising standards. This provision will make it much more difficult to raise European standards in the future if, for example, new scientific evidence emerges about the harmfulness of pesticides. So CETA will potentially freeze EU standards at their current level.

The extent to which the CETA agreement aims to prevent future strengthened protection standards is also illustrated by the Canadian government's plan to prevent EU member states from unilaterally setting their protection standards higher than those in the EU.

This is according to internal preparatory documents of the Canadian government, prepared for the debate in the CETA-SPS Committee:

The goal is for EU Member States to refrain from taking non-science based, unilateral measures, particularly measures inconsistent with scientific decisions made at the EU level.⁶⁴

At first glance, "scientific decisions" sound positive. But this in fact refers to the "science-based" approach to risk assessment that is common in Canada, and actually means reversing the burden of proof.

In other words, in Canada a product is first approved for the market and it can only be withdrawn from the market if it has been scientifically proven that it is harmful.

The General Product Safety Directive (GPSD) of the EU ensures that only safe products are sold on the market. Under this Directive, “a product is safe if it meets all statutory safety requirements under European or national law”⁶⁵ – the safety of a product must be proven before it is allowed on the market. Moreover the TFEU set a high standard for such a safety assessment (article 191): “Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union”, and it “shall be based on the precautionary principle.”⁶⁶

North American trade partners do not follow the precautionary principle,⁶⁷ and often deliberately imply that it is not science-based, thus tactically creating a contradiction between a science-based and a precautionary approach, in order to undermine EU standards.

Lack of transparency

The European Commission does not live up to its promise of full transparency in European trade policy. The Commission does publish CETA committee documents on its website.⁶⁸ However, with a few exceptions, there are no detailed minutes of the committee meetings published, despite the fact that one of the first decisions of the CETA Joint Committee was to adopt rules of procedure that clearly provide for detailed minutes and reports.⁶⁹

In response to a written question from Foodwatch looking for more information about this, the EU Commission provided only a very meagre reply, stating that the Joint Committee had decided to abolish the “minutes”.⁷⁰ These detailed minutes, which outline the exact course of discussions, but above all record plans, decisions made and objectives agreed, are essential to enable civil society, researchers and analysts to follow the work of the committees. If it is not clear who is advocating which positions in the negotiations about the implementation of the agreement, CETA will remain a mysterious and opaque “black box”.

Lists of participants in the meetings are also not accessible. This is important in order to support civil society to track the extent to which industry representatives attended the various committee meetings as experts and brought their interests to bear. Presentations made at committee meetings and background documents distributed are also missing from the Commission’s website. As is information on decisions in preparation.

All of this information should be publicly available, and is necessary to ensure that civil society can critically and constructively monitor the implementation of the CETA agreement. It is also essential to enable a public debate to take place on the issues being negotiated. Transparency to support democratic debate and participation is being denied to citizens and Non Governmental Organisations (NGOs), including the members of the CETA civil society monitoring group, the Domestic Advisory Group (DAG).⁷¹

Even parliamentarians left out of the loop

Even elected representatives in the European Parliament are insufficiently informed about the implementation of CETA in the Committees – they have access to the same superficial information as the general public. In addition, theoretically they can request further documents. However, they are not allowed to share or circulate the content. As in the case of the highly controversial Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA (a trade agreement that was eventually abandoned, significantly due to public and civil society outcry), a reading room exists where MEPs can look at documents – however they cannot take documents from the room, or transcribe them. This approach makes demo-

cratic participation by legitimate representatives impossible. The very concept of such a restricted reading room undermines and contradicts the accountability and oversight function that MEPs are supposed to have.

The level of information and transparency available for parliamentarians from EU member states, some of whom have not yet voted on CETA, is even worse. In some countries, parliamentarians receive the same documents as their MEP colleagues; however in many countries, they have been given access to even less information.

Enabling the lowering of health and other standards – Examples

Industrial, intensive agriculture is an important driver of climate change and therefore the issues discussed in the CETA committees on SPS or agriculture can contribute to particularly emissions-intensive agriculture receiving trade advantages.

Example: The Case of Hygiene Inspections

To return to the issue of hygiene inspections: it is clear that the production and trade of meat is highly damaging to the climate (see Chapter 3). Yet an increase in meat exports is a declared aim of the CETA agreement. These exports are to be boosted by more “flexibility” in the interpretation of various standards. This concerns, for example, the control of imported goods. Effective food hygiene controls are essential to protect consumer health. As far as sanitary controls on imports of agricultural products are concerned, the text of the CETA agreement so far stipulates that imports of live animals will be subject to 100% controls. However, the relevant SPS Committee can at any time recommend to the Joint

Committee that it change the frequency of controls or recognise the equivalence of different standards.⁷² This means that control standards in fact could be lowered. In addition, the agreement states that import controls must be “no more trade restrictive than necessary”.⁷³

There is therefore a risk that the Committee’s decisions will jeopardise the EU’s level of sanitary controls and thus the health protection of EU consumers. The possibility of a further reduction in the quality of controls under CETA is worrying. On the one hand, of course, because animal health is also important in terms of diseases that can be transmitted to humans. On the other hand, lower quality controls could lead to more meat being traded, which in turn would lead to increased pressure on the climate (see Chapter 3).

Strict controls are also needed to prevent the import of meat produced with growth-promoting substances (e.g. growth hormones), which are banned in the EU but allowed in Canada. Canada has been trying for decades to per-

suade the EU to abandon its strict position on protecting consumers. As early as 1996, it brought a complaint before the WTO (as did the USA) against the EU's decision ban the import meat from livestock that have been treated with growth hormones.⁷⁴ So, the possibility of a change in the level of protection recognised in CETA is not just a theoretical risk, but a very real one.

Internal documents from the EU Commission in preparation for the 2020 meeting of the SPS Committee show that both parties are willing to exchange views on the revision of Annexes 5 C (Process of Recognition of Regional Conditions: Plant Pests) and 5 E (Section B: Phytosanitary Measures).⁷⁵ The latter annex in particular could bring about some very dangerous changes as it deals with phytosanitary measures, including pesticides. The Commission wrote:

The EU is ready to engage with Canada on ideas to review these annexes in respect of the regulatory procedures to be followed to review annexes. The EU aims at an outcome whereby trade facilitating measures in the plant health area could be included in the annexes.⁷⁶

As we have outlined, this would mean an amendment to the CETA agreement after its actual ratification by the EU Parliament. On the other hand, the EU Commission is looking for “trade facilitating measures”. However, de facto trade facilitation often means less burdensome and costly standards to meet, and could therefore indicate a possible lowering of high safety standards.

There are also other annexes to the CETA agreement that are currently empty, but will be “filled in” by the committees. This will be done without any parliament being able to approve or reject them, or even to examine their provisions in detail before they are taking effect. There are at least four other annexes to CETA in addition to those mentioned previously.⁷⁷



Photo: Scott Bauer / Wikimedia.org

Example: The Case of Pesticides

As already described, a recurring debate in the CETA SPS Committee is about the maximum residue level of pesticides (MRLs). This describes the maximum amount of pesticide residue that is allowed to remain on food products when a pesticide is used according to label directions, that is not deemed a concern to human health. The EU's MRLs are under constant fire from Canadian government representatives, and the Canadian agricultural lobby. They argue that MRLs in Europe are too stringent, leading to restrictions on the use of certain pesticides that are deemed safe in other parts of the world. This imposes a barrier to trade, according to them. The EU, on the other hand, refers to its commitment to the precautionary principle. However, there is also resistance to the strict legislation within the EU, and the Canadian criticism is grist to the mill of these critics.

The debate on MRLs again featured prominently in the report of the 2022 SPS Committee meeting. Weakening them appears to be one of the Canadian government's top priorities.⁷⁸ This is understandable, as the import of pesticides from Canada to the EU has been steadily increasing since the provisional application of CETA (see Chapter 3 for data and impacts on

the environment), and is an important line of trade for the powerful Canadian agricultural lobby. In addition to criticising the high threshold values for pesticides in general, Canadian government representatives are focusing in particular on the EU's planned regulation of neonicotinoids, a group of highly effective and toxic insecticides. In Canada, they are used extensively in maize and soya cultivation. In the EU, they can only be used under emergency authorisation (although in January 2023 the European Court of Justice ruled that seeds may not be treated with neonicotinoids in the EU).⁷⁹ The damage caused by the use of these toxic insecticides is significant, especially for pollinators such as bees and bumblebees. This is why the EU is trying to protect European consumers and pollinators with its planned regulation. However this planned regulation is being harshly criticised and questioned by Canada in the CETA SPS Committee. Canada is working together with some large European agricultural companies on this issue. Most recently, in December 2023, the German Bayer Group sought a softening of the MRLs and import tolerances for neonicotinoids from the European Food Safety Authority (EFSA).⁸⁰ It is clearly a concern that constant dripping wears away the stone.



Photo: Eric Brehm / Unsplash.com

Example: The Case of Forest Protection under Fire

In fact, many of these committee meetings are used to torpedo climate protection measures. This was recently the case in the bilateral dialogue on forest products. Forest dieback, forest fires and deforestation are a major problem for climate protection and biodiversity worldwide. This is no different in Canada and Europe. There have been severe forest fires in Canada in recent years. In 2023 alone, an area of forest more than half the size of Germany burned (around 18.496.051 hectares, see figure 26).⁸¹

Europe’s forests are also suffering. For this reason – and in light of the global forest crisis – the EU has developed a regulation on deforestation-free supply chains, which aims to combat deforestation more effectively and protect important carbon sinks for the climate.⁸² At the same time, however, trade in timber and timber products between the EU and Canada is increasing, as discussed in Chapter 3. And now Canada sees its timber exports to Europe threatened by the proposed EU regulation. Canadian representatives therefore used the 2022 meeting of the Bilateral Dialogue on Forest Products to directly attack the proposed regulation:

The EU provided an update on its proposed Regulation on deforestation-free supply

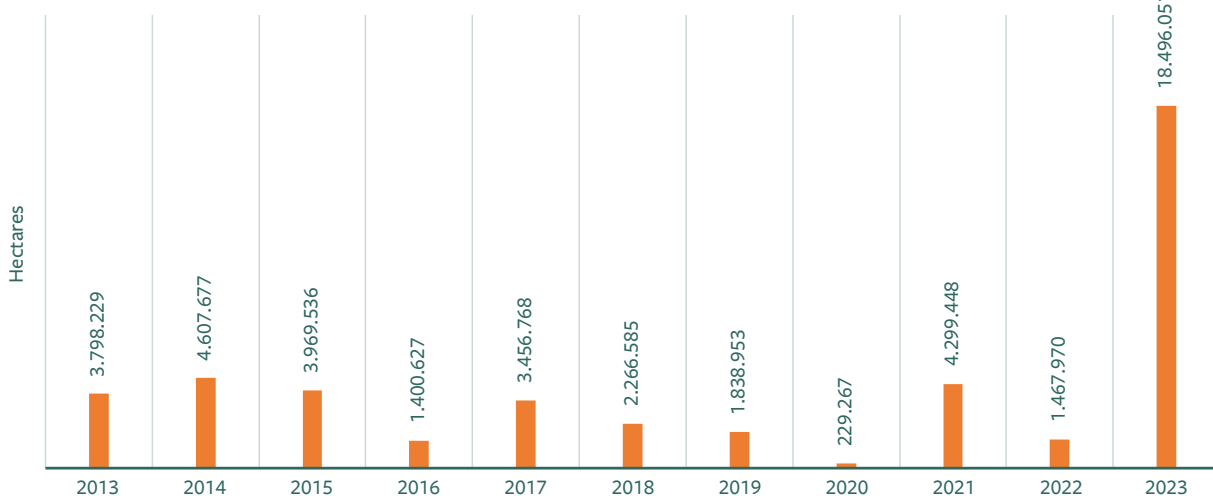
*chains. In that context, Canada flagged its concerns with the EU’s proposed regulation noting that it had the potential to disrupt Canadian exports of forest products to the EU despite Canada’s low risk for deforestation.*⁸³

However, it is not only the planned regulation on deforestation-free supply chains that is a thorn in the side of the Canadian representatives. The EU’s planned reforms on renewable energy also came under fire at the meeting:

*The EU provided an update on the Renewable Energy Directive II implementation status as well as on the proposed Amendment to the Renewable Energy Directive II. Canada flagged concerns with proposed amendments that could affect Canadian exports of woody biomass to the EU and asked the EU to consider its concerns as the amendment process moved forward.*⁸⁴

Thus it is clear that CETA, with its committee architecture, provides a platform and a process for attacking and, potentially, weakening unwelcome (climate) regulations. The Committee structure provides an opportunity to lobby against progressive legislation behind closed doors because, as already described, meetings are not open to the public and little information is made public.

Figure 26: Annual Area Burned in Canada



Source: Own illustration; data from <https://www.ciffc.ca>

Shaping policy: Privileged corporate influence and access

Corporate lobbyists often possess substantial financial resources and expertise in navigating and influencing the political landscape. This leads to an imbalance of power, where the financial interests of well-funded industries can disproportionately influence the content of laws. This can result in legislation that primarily benefits corporations rather than the broader public interest.

CETA provides an ideal conduit for obfuscation regarding influence and corporate lobbying, given its opaque committee structure and their predominantly covert operation. Lack of transparency can make it difficult to track the extent of corporate influence in the process of developing the CETA agreement further. It is generally large corporations that have the staff and resources to handle the administration involved in international trade.

Example: The Case of Genetically Modified Organisms

CETA poses a potential threat to the rigorous regulations on genetically modified organisms (GMOs) in the EU. The Canadian government is actively advocating for a global acceptance of contamination from unauthorized GMOs. Furthermore, Canada has a history of challenging the European GM ban, filing a WTO complaint in 2003.⁸⁵ Now, the Canadian government invited industry representatives from Canada and the EU to a meeting prior the meeting of the CETA Bilateral Dialogue on Biotech Market Access Issues in 2020. The government explicitly asked for input that it could then exclusively present to the EU Commission in the Committee:⁸⁶

*In addition, we invite you to provide us with a description of any GM events for which you would like us to request a status update from the Commission. The GM events that we receive will be consolidated and a list will be provided to the EU in advance of the Dialogue. If there are GM events that are considered a priority, please identify these together with a rationale as to why they are a priority so that we can convey this to the European Commission. A description of the benefits to farmers/industry/crops would be most helpful.*⁸⁷

And industry delivers! Using the feedback it received from corporations, the Canadian Government formulated subsequent crucial messages for the EU concerning the CETA Biotech Dialogue meeting in 2020:

We have heard that the EFSA process is getting slower, despite recent initiatives to improve efficiency. As the majority of the world becomes more experienced in biotechnology product assessments, we expect the process to take less time. As you know, we are concerned that these delays could impede trade between Canada and the EU.

On one hand, the Canadian government criticises the sluggish pace of GMO approvals by the European Food Safety Authority (EFSA). It also expresses its hope that these procedures will be expedited, or else it warns of potential trade restrictions.

At this time, Canadian industry has expressed an interest in bringing to your attention two specific traits: one that has now been in the EFSA risk assessment stage for 8 years – Corteva (formerly Pioneer) canola event DP73496 (EFSA-GMO-NL-2012-109), and a second more recent one – NuSeed DHA canola, NS-B50027-4 (EFSA-GMO-NL-2019-160)

Then the Canadian government directly raises the lobbying interests of Canadian industry, and demands:

*We hope these applications of interest will be processed by EFSA expeditiously and in accordance with the regulatory timelines that have been established.*⁸⁸

It is evident that the CETA committees convene privately and are infiltrated by the concerns of Canadian and European industry lobbies. These parties are given preferential treatment and opportunities to assert their interests in negotiations, while other stakeholders, including consumer advocates and even elected parliamentarians, are excluded from the discussions.

Example: The Case of Tar Sands

While the example above is of the GMO lobby, the fossil fuel industry will surely act very similarly. The power and efforts of the fossil fuel lobby to shape regulations is a significant and widely recognised influence on government policies and environmental regulations. Fossil fuel companies, including oil, natural gas and coal producers, have historically held considerable sway over the regulatory landscape due to their economic clout, political influence, and extensive lobbying efforts. The CETA committees are a welcome gateway for them to continue this corporate access and influence.

The power of the Canadian fossil fuel lobby was already evident during the CETA negotiations. During this period, the oil companies succeeded in significantly watering down the EU Fuel Quality Directive. The European Union Fuel Quality Directive (FQD) is a significant regulatory framework aimed at improving the quality of fuels used within the EU. Enacted in 2009, the FQD seeks to reduce the carbon intensity of transportation fuels, mitigate climate change and foster a more sustainable energy future. The directive addresses both conventional fossil fuels and alternative fuels, establishing stringent standards to promote cleaner and more efficient energy sources.⁸⁹



Photo: Mockup Graphics / Unsplash.com

While this sounds positive, it has already been restricted in the legislative process. This relates to tar sands oils, which are extracted and exported from Canada on a large scale. Tar sands are the most carbon-intensive source of oil, with a much higher environmental impact than conventional crude oil. Research suggests that tar sands extraction and refining leads to 23% higher greenhouse gas emissions than average EU fossil fuels.⁹⁰ And yet the large emissions of tar sands oil is not taken into account in the FQD.

The pressure from the Canadian Government and the Canadian fossil fuel lobby has probably also contributed to this. They used the CETA negotiations as a platform and bargaining chip to get the EU to water down its directive. In fact, the Canadian government itself invested around 27 million euros to publicly promote tar sands. This included – according to government documents – other outreach activities, including research to support Canadian lobbying against the EU Fuel Quality Directive.⁹¹

Until today, Canadian oil producers benefit from the fact that the EU refrained from tightening the Fuel Quality Directive during the CETA negotiations. This would have effectively

prevented the sale of tar sands oil in the EU.⁹² This was a very significant missed opportunity for climate protection and is an example of how the fossil fuel lobby is pushing through its interests via the CETA trade agreement.⁹³

Even more alarming is the fact that it will be very difficult for the EU to tighten the FQD in the future, and, if necessary, to include tar sands. When CETA (with its arbitration tribunals) is fully in force, Canadian companies could argue that it is “discrimination” if the EU subsequently differentiates between the calculation of the greenhouse gas intensity of fuels from conventional oils and those from unconventional oils such as tar sands, most of which come from Canada. As a result, a Canadian company could initiate an investment arbitration case and seek compensation (see Chapter 6). An expert report by the German Bundestag, which examined with this issue, reached the same concerning conclusion. It also pointed out that this so-called discrimination could be justified with reference to environmental protection goals.⁹⁴ However, in view of past judgments, it is uncertain that an arbitration tribunal would find in favour of the EU’s right to take action to avert climate change in this way.



Photo: Kris Krüg / Flickr.com

In a nutshell

This chapter of the report examines the complex relationship between trade agreements, standards, and climate protection in the CETA agreement.

The discussion explores the structure of CETA, which focuses on eliminating non-tariff barriers. The various committees play a pivotal role in its continuous evolution. The extensive rights of the committees and their impact on decision-making raise concerns about the democratic deficit. Committees can even amend the agreement without the involvement of the European Parliament.

The mutual recognition of standards could potentially freeze or weaken protection rules, and decisions by CETA committees, and could limit the EU's ability to unilaterally raise standards. Furthermore, the lack of transparency in the CETA committees is worrying. Detailed minutes are not readily available, and key information on participants and decisions is absent.

The potential impact of CETA on EU standards, autonomy, and the precautionary principle in environmental and consumer protection is alarming. The Canadian government may even attempt to prevent EU member states from setting higher protection standards than those in the EU.

There are various examples of potential risks and challenges associated with CETA, including impacts on health and environmental standards in areas such as meat exports, pesticides, forest protection, GMOs, and fossil fuels:

CETA aims to boost meat exports, possibly compromising climate goals. Flexible interpretation of standards, especially in hygiene inspections, may lower control standards for imported goods, posing risks to animal and human health.

At the same time ongoing debates in the CETA SPS Committee focus on Maximum Residue Levels (MRLs) for pesticides. Canadian representatives argue that European MRLs are too stringent, impacting trade. Canada seeks to influence EU regulations on neonicotinoids, with potential environmental consequences.

The CETA bilateral dialogue on forest products is used to challenge EU regulations on deforestation-free supply chains. Canada expresses concerns about the EU's proposed regulation, potentially disrupting Canadian exports of forest products.

CETA poses a threat to EU regulations on Genetically Modified Organisms (GMOs). The Canadian government actively advocates for acceptance of in the EU unauthorized GM contamination. Industry representatives are invited to provide input, shaping crucial messages for the CETA Biotech Dialogue.

The fossil fuel lobby, particularly in Canada, significantly influenced the EU Fuel Quality Directive during CETA negotiations. Tar sands oil, with a higher environmental impact, is not adequately accounted for in the directive. The lobbying efforts of the Canadian government and fossil fuel industry during CETA negotiations may hinder future efforts to tighten regulations for climate protection.

6 Investment: flows, stocks and protection

CETA's chapter 8 sets out measures to liberalise investment between the EU and Canada and to protect investments against government regulations that foreign investors might consider detrimental to their profits. The chapter's sections on investment protection, however, only come into force once CETA's ratification has been finalised in all EU member states, which is still not the case. In contrast, the sections liberalising investment flows between the EU and Canada have already been applied since CETA's provisional application in September 2017.

The chapter 8 provisions remove several barriers to foreign direct investment (FDI), such as performance requirements linking authorisations to transfer of green technologies or eco-friendly production processes. The chapter's main lacuna is that it does not contain any provisions committing the partners to cooperate on climate-related criteria for in- and outflows of bilateral FDI. Such a progressive form of environmental investment screening, controlling bilateral FDI flows based on their environmental and climate impacts, would be an important element of a truly green trade and investment agreement.⁹⁵

The FDI flows between the EU and Canada have been fairly volatile in recent years. While 2018 saw a sizeable increase in bilateral investment

flows, the following year, 2019, witnessed huge divestment, especially of Canadian FDI in the EU (Figure 27).

These divestments also affected the stock of FDI accumulated on both sides of the Atlantic. After an increase in 2018, FDI stocks receded to levels seen in the years before CETA's implementation (this can be seen particularly clearly for EU FDI in Canada, where Eurostat data is less patchy than for Canadian FDI in the EU) (Figure 28).

FDI run through EU tax havens

A special feature of EU-Canadian investments is the great importance of the two largest EU tax havens, the Netherlands and Luxembourg. The large majority of EU investment in Canada, as well as Canadian investment in the EU, is channelled through the Netherlands or Luxembourg (Figure 29).

Both EU countries offer transnational companies the opportunity to create special purpose entities (SPEs), enabling profit shifting from FDI recipient countries to SPEs in the Nether-

Figure 27: Foreign Direct Investment Flows EU-Canada

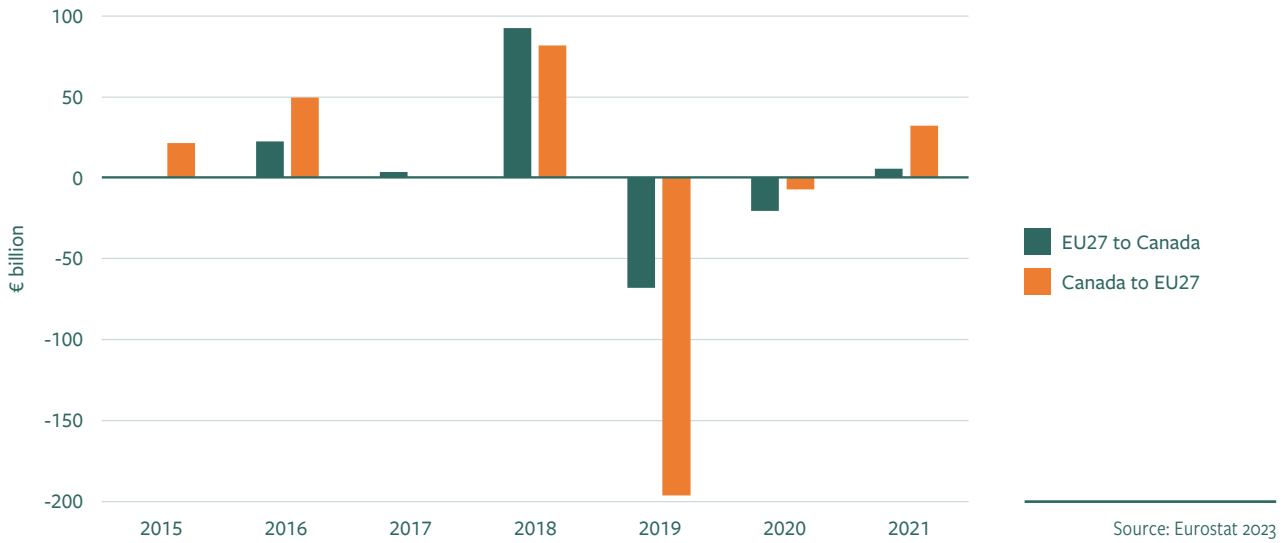


Figure 28: Foreign Direct Investment Stocks EU-Canada

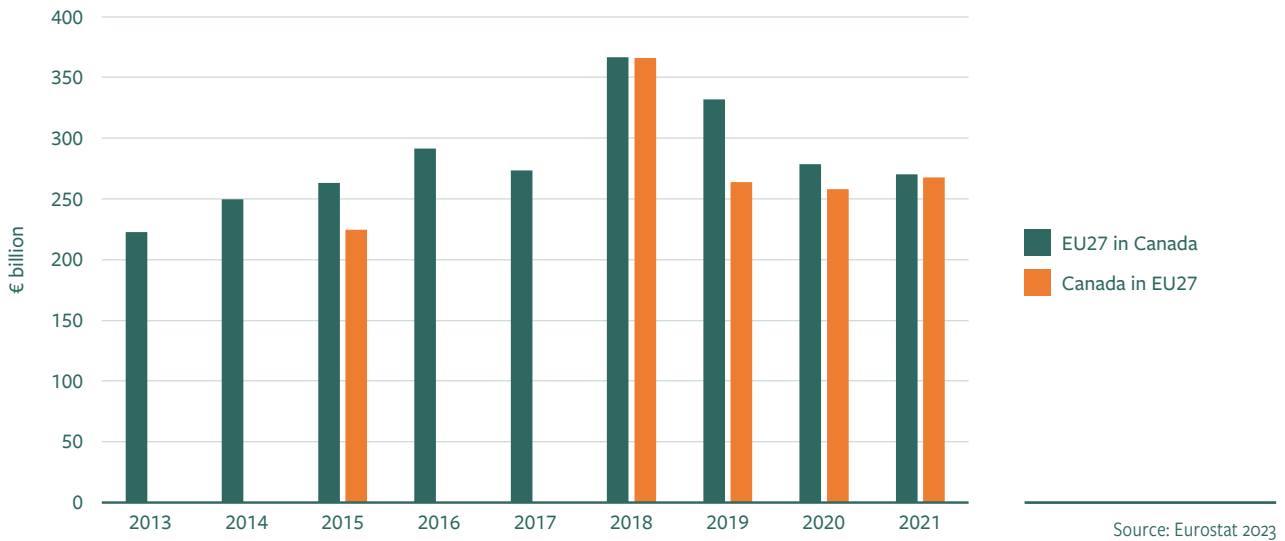
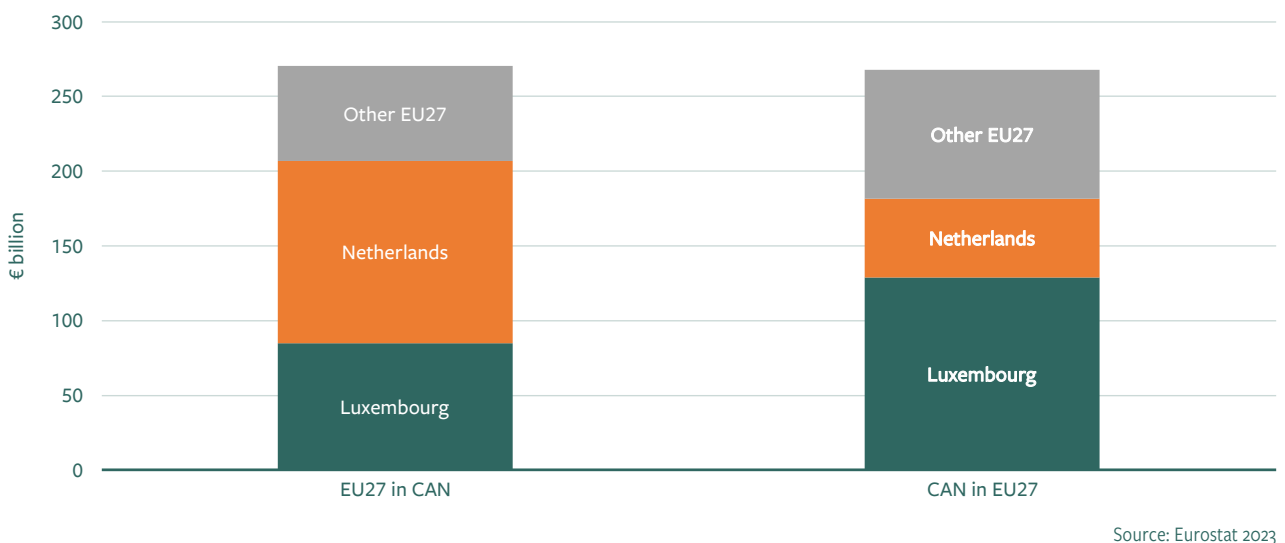


Figure 29: Share of tax havens in EU-Canada FDI stocks 2021



lands and Luxembourg, thereby lowering their tax burden. The important role of tax havens in EU-Canadian FDI is an indication of huge fiscal losses for Canada and EU member states alike.⁹⁶ The corporate tax revenues currently lost by profit shifting could be used to finance the energy transition, for example – if CETA contained appropriate provisions to stop these forms of corporate tax avoidance.

Figures 30 and 31 provide a closer look at the Canadian sectors receiving FDI from the two

most important EU investor countries, the Netherlands and Luxembourg. As can be seen, the top sectors receiving investments from the two EU tax havens are the management of companies, the manufacturing industry, wholesale trade, mining/oil and gas as well as the finance sector. As the huge management sector probably invests significant sums through private equity firms and other vehicles, it is not possible to identify the various sectors covered under this broad heading that are ultimately receiving the European funds.

Figure 30: Netherlands FDI in Canada: Top 5 sectors 2022

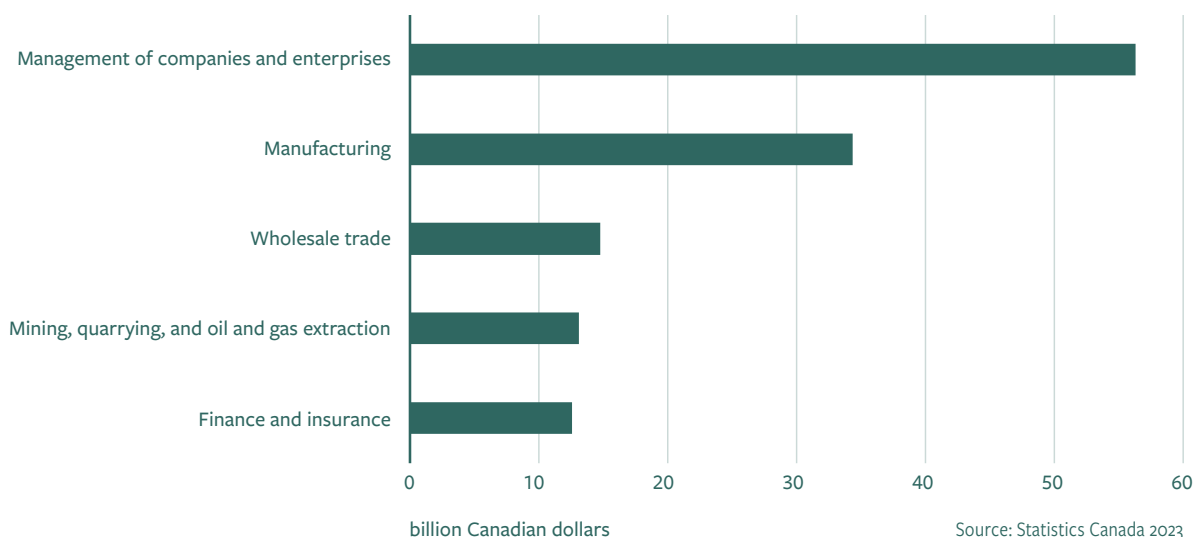
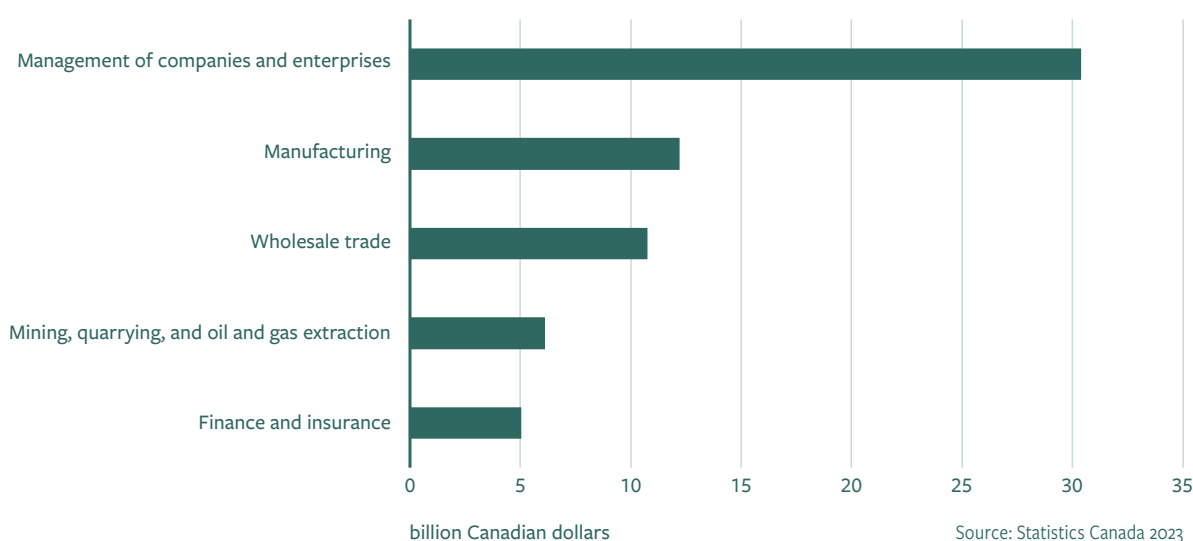


Figure 31: Luxembourg FDI in Canada: Top 5 sectors 2022



A review of Canadian FDI in the EU showed that the top recipient of investment is Luxembourg, followed by the Netherlands. The main sectors receiving Canadian capital in these two countries are finance and management as well as mining/oil and gas (Figures 32 and 33).

The key sectors receiving Canadian and European investment point to the particular climate risks of these bilateral capital flows. Investments in the energy-intensive manufacturing industry or the mining, oil and gas sectors pose eminent risks to achieving both partners'

climate goals. CETA's lack of a screening mechanism targeting capital flows to sectors with strong climate impact should therefore be a particular concern for policymakers.

Equally concerning is the huge share of investments channelled through EU tax havens. These capital flows are diminishing the fiscal revenues desperately needed to support the energy transition. An overhaul of CETA should therefore also encompass targeted measures to eliminate the possibilities for profit shifting and tax avoidance offered by EU tax havens.

Figure 32: Canada FDI in Netherlands: Top 5 sectors 2022

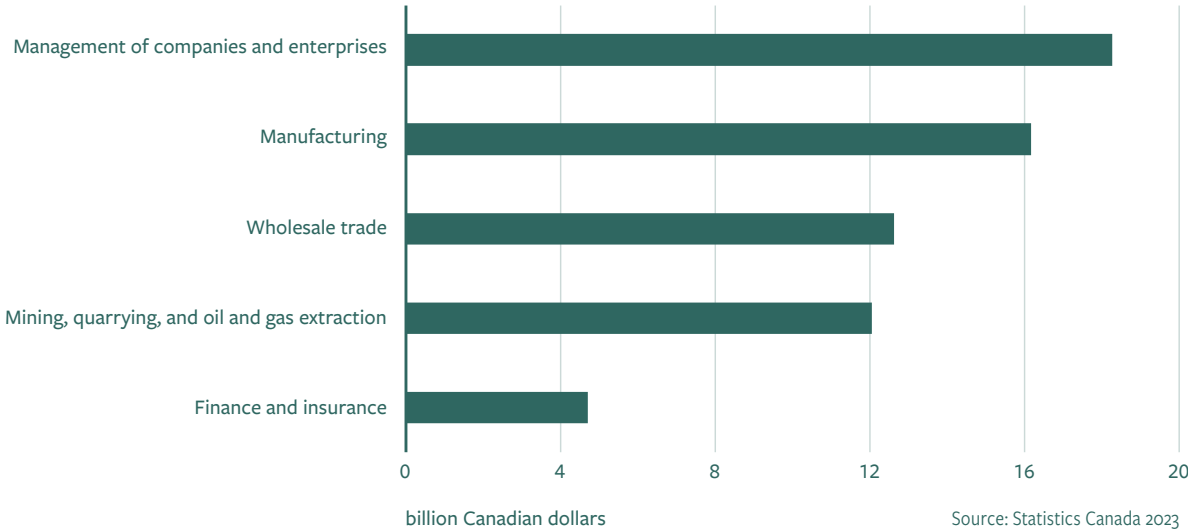
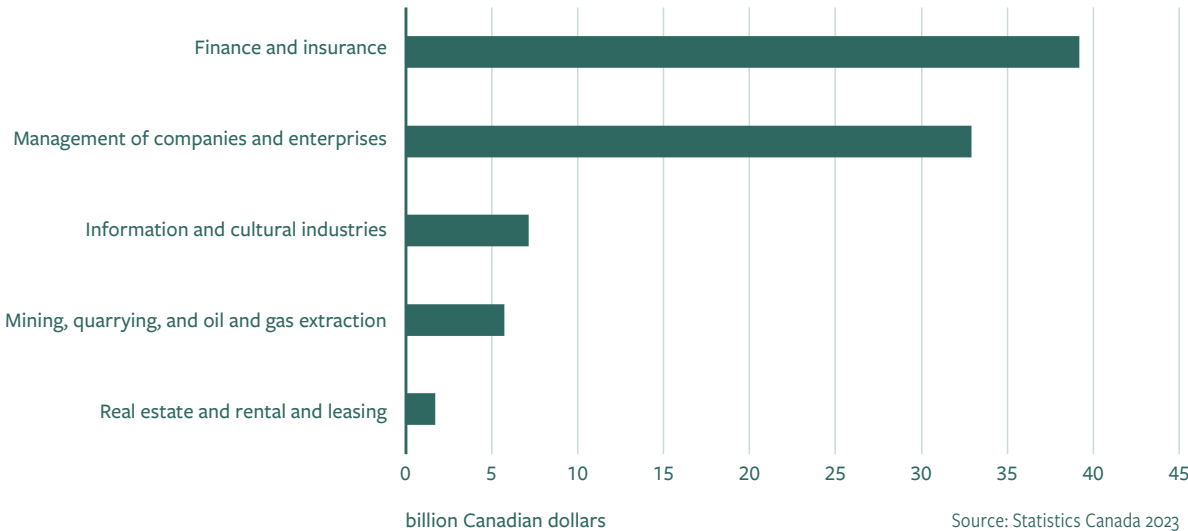


Figure 33: Canada FDI in Luxembourg: Top 5 sectors 2022



ICS will enable lawsuits against climate action

CETA has largely been applied provisionally since September 2017, with certain notable exceptions. This is mainly because a few of its provisions fall under so-called mixed competence and therefore cannot enter into force until the parliaments of all EU member states have ratified the agreement. The most well-known of these are the provisions on investment protection, namely corporate rights. In CETA, these are dealt with through the Investment Court System. This system enables corporations to sue states for billions of dollars in damages if policy decisions reduce their profits.

These corporate rights and the arbitration mechanism used to enforce them, called Investor-State Dispute Settlement (ISDS), have rightly gained notoriety in recent years. The CETA agreement features a modified version of the ISDS, called the Investment Court System (ICS). However, the reformed ICS remains as risky as its predecessor ISDS – many of the lawsuits that have been filed to date through the ISDS could still be brought forward under the revised ICS framework.⁹⁷

BOX 5

ISDS and ICS in comparison – old wine in new bottles⁹⁸

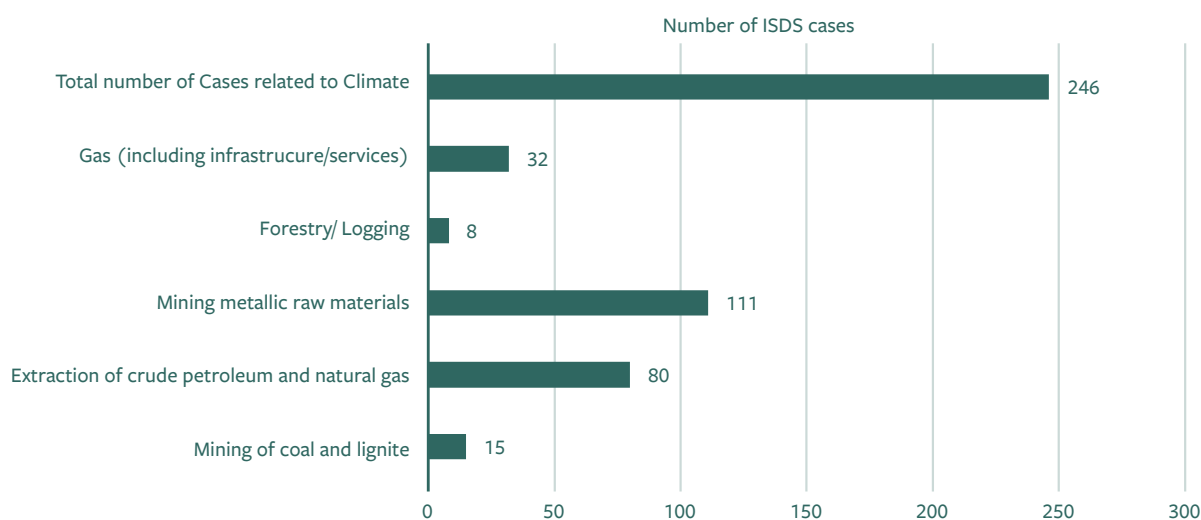
ISDS	ICS
Exclusive, vaguely formulated rights and no binding obligations for investors (for example in the area of environmental protection)	More precisely defined but still far-reaching rights and no binding obligations for investors (for example in the area of environmental protection)
No protection of public interest from lawsuits	No protection of public interest from lawsuits
No possibility to appeal	Appeal authority introduced
Arbitrators selected by the states and investors	Certain procedural improvements, e.g., the EU and Canada select a roster of 15 arbitrators and disputes are handled by three members drawn from the roster
No access to arbitration proceedings for affected parties (for example impacted local communities) and domestic investors to arbitration proceedings	No access to arbitration proceedings for affected parties (for example impacted local communities) and domestic investors to arbitration proceedings
Incentive for arbitrators to rule in favour of investors	Arbitrators earn substantially more when they preside over disputes, and thus have an incentive to rule in favour of investors in order to attract more cases
Extremely high compensation sums go far beyond the damage caused	No unambiguous limits on compensation amounts

This ICS mechanism undermines the fair and equitable application of the rule of law. It hampers states' ability to safeguard the environment, consumers' and workers' rights, curtails the power of elected parliaments, and redirects vast amounts of taxpayers' money to corporations. CETA's enshrinement and centering of corporate rights also impedes progress on climate action: for instance, significant investors may use the ICS mechanism to ensure ongoing operation of pipelines, liquefied natural gas (LNG) terminals or the extraction of fossil fuels and other raw materials, despite the evident public interest in phasing out fossil fuel use.

Such claims may impede policymaking and discourage decision-makers from pursuing public interest environmental and climate action that could lead to disputes under CETA.⁹⁹ As of October 2023, at least 246 ISDS cases have been taken that are linked to fossil fuels or mining, out of a total number of 1,257 known cases.¹⁰⁰ This means that at least one in five ISDS cases have occurred in environmentally sensitive sectors, often targeting attempts to regulate them with/through public policy. Furthermore, in their latest report the Intergovernmental Panel on Climate Change highlighted corporate rights of action as a hindrance to energy transition.¹⁰¹

This problem is now widely recognised and attempts are being made at various levels to address it. Most recently, the Organisation for Economic Cooperation and Development (OECD) has launched a process to examine how to minimise the danger posed by ISDS to climate policy. One potential solution that has been discussed is an exemption of climate policies from ISDS, so that countries would not be prevented from implementing progressive climate policies.¹⁰² The idea is not new,¹⁰³ but the fact that the OECD is now embarking on official process shows the need to address this issue, and possibly the current political momentum in favour of such a change. CETA, on the other hand, undermines precisely such efforts with its agreements on investment protection.

Figure 34: ISDS cases related to Climate.(total number of known ISDS cases: 1.257)¹⁰⁴



Gabriel Resources versus Romania

Gabriel Resources, a Canadian mining company, is seeking compensation of 6.5 billion US dollars (6.2 billion euros)¹⁰⁵ from the Romanian state due to its objection to a proposed gold mine in Transylvania's Roșia Montană. This amount represents more than two percent of Romania's gross domestic product in 2022.¹⁰⁶

The mine project, if realised, would become the largest open-pit gold mine in Europe. Enormous masses of rock would have to be extracted and refined to obtain gold. To do this, 12 to 15 million kilograms of cyanide – an extremely harmful chemical – would be applied and released into the environment. The usage of cyanide is a very contentious issue, as in case of accidents it can infiltrate drinking water and pollute it, with serious implications for the local community and wildlife.

In July 2015, Gabriel Resources, submitted an arbitration request against Romania to the ICSID (the World Bank's International Centre for Settlement of Investment Disputes).¹⁰⁷ The company is claiming damages under Romania's bilateral investment treaty (BIT) with Canada and the United Kingdom. The complaint submitted by Gabriel Resources refers to the Fair and Equitable Treatment (FET) clause. Investors are generally afforded a wide-ranging interpretation of the term "fair and equitable". Additionally, the company alleges that the provisions concerning "indirect expropriation" and "discrimination" have been breached.¹⁰⁸ In mid-September 2023, it was announced that the verdict would be reached within the next six months.¹⁰⁹

The CETA agreement could lead to similar lawsuits, given that the Investment Court System (ICS) has failed to effectively mitigate the pertinent clauses on "fair and equitable treatment", as well as (indirect) expropriation and discrimination, which Gabriel Resources cites in their lawsuit.

This concern is backed up by the legal actions of Christophe Bondy – the former chief investment negotiator for the Canadian government during the CETA negotiations, who is now working for the private sector (Ruby River Capital) and representing claimants suing his former government employer. In the ISDS case lodged by Ruby River Capital against Canada under the NAFTA agreement Bondy uses CETA-like terminology around Fair and Equitable Treatment to make the case against the environmental assessment that denied the company its permit for liquified natural gas export terminal. The company he represents is currently demanding 20 billion US dollars as compensation for the forward-looking climate policy adopted by the state of Quebec.¹¹⁰



Photo: Cristian Bortes / Flickr.com

Potential for oil and gas litigation under CETA

Canadian corporations have made significant investments in oil and gas ventures in the European Union, giving them a vested interest in their continuation. There are currently twelve Canadian companies operating in the EU's oil and gas industry, with eight already extracting oil and gas in 2021¹¹¹. In most cases, substantial capital is invested before the extraction of any oil or gas. €4.2 billion was invested in developing the Corrib gas field in Ireland, primarily held by two Canadian investors – Canada Pension Plan (CPP) and Vermilion.¹¹² In the event that CETA is ratified and the Irish government enforces more stringent climate regulations in the future, for example a production ban or restriction, CPP and Vermilion could pursue legal action against the government for compensation under CETA. Patrick Costello, a Green Party member of parliament, took a case to Ireland's Supreme Court, arguing that ratifying CETA would require a referendum in order to authorise the amendment of Ireland's Constitution, which he argued CETA infringed. In November 2022 the Irish Supreme Court ruled in his favour, with a majority concluding that ratifying CETA would be a breach of the Irish Constitution, due to the investor-to-state-dispute settlement rights in the agreement. However, a further part of the judgement identified a potential way out of this dilemma through amending certain domestic laws, and it remains to be seen whether the Irish government will follow this path.¹¹³

In the past, Canadian companies have been brought 65 claims against foreign states.¹¹⁴ Furthermore, the potential for litigation under CETA is not limited to Canada and the EU. In fact, prominent US-American businesses like Exxon Mobil Corporation, which have a presence in both Europe and Canada, could initiate ICS lawsuits under CETA.¹¹⁵

Effective climate policies in Europe would undoubtedly reduce the profits of oil and gas ventures, along with other climate-damaging cor-

porate activities. If such measures for climate protection were put in place by European governments, they could potentially lead to ICS cases under CETA. Alternatively, governments might not implement measures for fear of the financial impact of ICS rulings against them, which would in turn have a profoundly negative effect on the climate.

BOX 6

CETA's Interpretative Declaration – Climate commitments deleted

During autumn 2022, the CETA agreement was due to be ratified by the German Bundestag. The climate issue and concerns gained renewed attention during this process. The approval of the country's Green Party MPs was necessary to achieve a majority vote. The Greens had previously declared their intention to reject the CETA agreement. In order to address their concerns, the European Commission created a so-called "Interpretative Declaration", to explain contentious matters regarding investment protection standards and to fortify the fragile climate provisions of the agreement.¹¹⁶ The Greens made their approval contingent on this text, leading to the ratification of the CETA agreement by the Bundestag in December 2022.

However, the Commission needed to clarify the interpretative declaration with the remaining EU member states and its contracting partner, Canada. The clarification process was completed during 2023, without the involvement of the parliamentarians. Subsequently, the final leaked text revealed that almost all references to more binding agreements on climate protection had been deleted.¹¹⁷ It appears that Canada played a key role in this weakening of the declaration, as stated in leaked cable reports from the Commission to member states.¹¹⁸ This once again shows the lack of interest of the parties to the agreement in making more significant commitments towards climate protection through trade. The text has been approved by the member states in the council and adopted as a decision by the Joint Committee in February 2024.

EU's inconsistency – time to end exclusive corporate rights!

These corporate rights seem outdated in the context of CETA. After all, both the EU and Canada possess their own national, domestic courts that international corporations can utilise at any time, similar to domestic investors who are not granted the exclusive ICS route.

Furthermore, Canada has re-negotiated a fresh rendition of the trade agreement linking all three North American nations (US, Mexico and Canada - USMCA), previously known as NAFTA. This new agreement no longer includes ISDS, at least between Canada and the US. The then Canadian Trade Minister, Chrystia Freeland, explained the reasons for this exclusion during a 2018 press conference:¹¹⁹

It [ISDS] has cost Canadian taxpayers more than \$300 million in penalties and legal fees. ISDS elevates the rights of corporations over those of sovereign governments. In removing it, we have strengthened our government's right to regulate in the public interest, to protect public health and the environment.

– Chrystia Freeland, Canadian Trade Minister (2018)

The Energy Charter Treaty (ECT), established in 1994, promotes and protects international investments in the energy sector. In the past the ECT has faced criticism for potential impacts on national sovereignty due to the high number of ISDS claims based on the ECT. In 2022, Germany, along with several other European states, withdrew from the Energy Charter Treaty. The European Union as a whole is also preparing to do the same.¹²⁰ Yet this highlights a deep inconsistency in the EU's approach to investor rights. The EU is acknowledging that investment protection provisions/investor rights put climate

protection at risk, and withdrawing from the harmful and much-criticised ECT, while simultaneously ratifying another agreement that includes the very same rights. This is both inconsistent and dangerous.

The presence of ICS in CETA fundamentally contradicts claims that the treaty supports positive action on climate change. The ICS is a relic of the era before the world became aware of the need to avoid climate chaos. It is far too dangerous to be implemented.

In a nutshell

*CETA's investment chapter is a risk to the energy transition.*¹²¹

– Alessandra Arcuri, University of Rotterdam

The ICS, a modified version of the Investor-State Dispute Settlement (ISDS) in the CETA agreement, allows corporations to sue states for damages if policy decisions impact their profits. Despite the introduction of the ICS, it remains risky, as many issues present in ISDS could still arise.

The Investor-State Dispute Settlement (ISDS) mechanism provides investors with vaguely formulated rights without binding obligations, while offering limited protection for public interest and restricted access to arbitration for affected parties. Additionally, the mechanism allows for potentially high compensation amounts, which can redirect taxpayers' money to corporations. This undermines the rule of law and hampers states' abilities to protect the environment and public interests. The ICS has a negative impact on climate action, as corporations could use it to challenge policies that favour environmental protection.

Furthermore, CETA has the potential to lead to oil and gas litigation involving Canadian companies investing in the EU. These companies may sue governments for compensation if strict climate regulations affect their ventures.

The Interpretative Declaration of CETA, which aims to address concerns and strengthen climate provisions, does not sufficiently do so.

Additionally, there is an inconsistency in the EU's approach to investor rights, as they withdrew from the Energy Charter Treaty but ratified CETA, which includes similar rights. The inclusion of ICS in CETA is contradictory to positive action on climate change.

7 Recommendations

In the context of heightened global tensions and the imperative to address climate change, the nexus between trade and the climate has become a crucial focus for researchers, policy-makers and environmental advocates. Trade agreements, such as CETA, are under scrutiny due to their potential impact on greenhouse gas emissions and environmental governance. The EU, a major trading power whose ambitious climate goals are outlined in the European Green Deal, holds a key role and significant potential to shape greener trade practices globally. The EU initially promoted CETA as a progressive agreement with strong commitments to environmental protection and climate change. However, critics – including experts, researchers, and civil society groups – have raised many concerns about its environmental impact, particularly on climate.

These concerns have been significantly substantiated in this study. Our detailed analysis tracks trade patterns before and after the provisional application of CETA in 2017 and the work of the committees established under the agreement. Our main outcome is that CETA does not appear to be a climate-friendly agreement. Since its application, trade in climate-damaging goods between the EU and Canada has increased and the agreement does not provide any binding provisions mitigating its impact on global warming.

The ongoing ratification process of CETA within the EU presents an opportunity to assess how trade agreements, especially those involving environmentally committed partners, truly influence climate outcomes. In this respect, our evaluation demonstrates that CETA shows hardly any sign of having a positive influence on essential climate outcomes – despite rhetoric to the contrary.

At the same time, there is still an opportunity for political intervention, as CETA's ratification has not yet been completed in many European countries and the agreement is therefore not yet fully in force (see figure 35).

Our recommendation in this regard:
As long as trade agreements do not support and help deliver ambitious climate targets, they should not be ratified.

We make the following recommendations for a revision of CETA:

- 1 Include strong provisions on climate protection:**

Provisions on climate mitigation and adaptation must be included in all chapters of the agreement. CETA must be subordinate to climate goals and international obligations to achieve net zero emissions.
- 2 Restrict or end trade in harmful products:**

Trade in climate-damaging goods such as oil, coal, timber, meat and plastics must be reduced or phased-out entirely. CETA should contain clear rules for limiting or banning trade in harmful goods. It should also include binding mitigation measures supporting the decarbonisation of production methods, supplemented by commitments to provide technology transfer and financial assistance.
- 3 Disempower undemocratic committees:**

The power of CETA committees to change parts of the agreement after ratification has to be restricted. These committees must be committed to transparent processes to curb the influence of corporate lobbyists obstructing climate measures. Meeting minutes, correspondence and other documents have to be accessible for the general public. Elected representatives must be given the opportunity to actively participate and to vote on proposed changes to the agreement.
- 4 Include environmental investment screening and reject Investor-State Dispute Settlement:**

CETA needs an environmental investment screening mechanism to control bilateral investment flows based on their climate impact. Such a mechanism should be included because the emissions-intensive manufacturing industry and the mining, oil and gas industry are among the top sectors receiving bilateral investments in the EU and Canada. In addition, the Investment Court System – a revamped Investor-State-Dispute Settlement mechanism – must be removed from CETA. These corporate rights to sue states unduly raise the cost of strong climate legislation – or may even prevent the adoption of respective laws and regulations – due to the threat of excessive compensation payments.

Figure 35: CETA ratification in the EU as of January 2024.¹²²



Endnotes

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PowerShift

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