

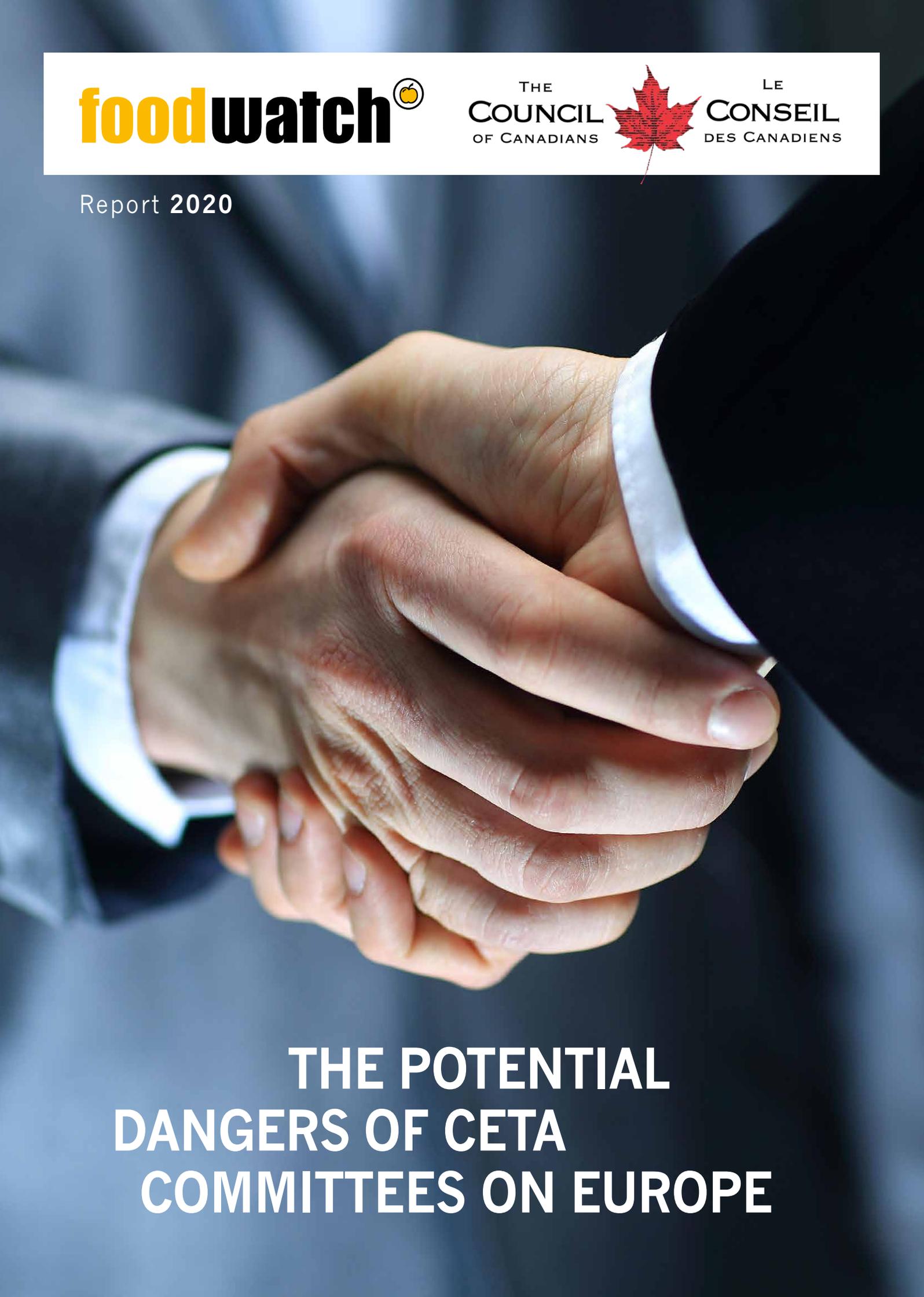
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Report 2020



**THE POTENTIAL
DANGERS OF CETA
COMMITTEES ON EUROPE**

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THE POTENTIAL DANGERS OF CETA COMMITTEES ON EUROPE

The Report is a cooperation with



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NEW FOOD REPORT SHOWS POTENTIAL DANGERS OF CETA REGULATORY COMMITTEES ON EUROPE'S FOOD SYSTEM

The Comprehensive Economic and Trade Agreement (CETA) agreement was provisionally ratified in September of 2017 between the European Union and Canada. Most of the agreement went into effect except the investor state provisions and various other provisions that were deemed the competency of EU member states. As such, each EU country must also ratify parts of the agreement. In February 2020, the agreement will be discussed and voted for ratification in the Netherlands.

Many Europeans have concerns about how CETA could affect food standards. In 2017, the Council of Canadians and numerous European partners produced a report on [Food Safety, Agriculture and Regulatory Cooperation in the Canada-EU Comprehensive Economic and Trade Agreement](#), outlining the regulatory differences between Canada and the EU that could jeopardize European food safety and production standards. It warned that Canadian food regulations on GMOs, pesticides, hormones, animal welfare, amongst others were much lower than European regulations, and that Canada has historically used trade agreements to attack European food safety legislation.

In the media, Canadian beef producers are already complaining regularly about European bans on growth hormones and using chlorine to wash carcasses and their ability to meet the CETA quotas. They have argued that eventually, European regulations must change.

One of the concerns was about how regulatory cooperation committees would put pressure on legislation. CETA set up joint committees between the EU and Canada to discuss how to deal with and accept differential regulations. One such committee, the Sanitary and Phytosanitary Committee, has been holding meetings between the EU and Canada. Consumers were concerned that the committee would put downwards pressures on food safety regulations.

Through the Canada's Access to Information Act, we obtained unpublished documents from the first meeting. While this document only covers one meeting out of many regulatory committee meetings, and many responses have been redacted, we have found some disturbing trends.

- >> Canada is using these forums to actively attack standards that Europeans cherish such as the precautionary principle and hazard-based assessments on pesticides. In the committee, Canada has been reassured that the EU will be moving away from this approach in the long term. This is contrary to CETA's Joint Interpretative document that claims to enshrine this principle and to fundamental EU law.
- >> Regulatory harmonization with Canada includes regulatory harmonization with the U.S.
- >> Canada is using the forum to pressure EU regulators and appears to have some success. On pesticides, minimum residue levels and glyphosate, Canada is actively challenging regulations often subtly threatening to bring them to the WTO.

While a challenge under CETA has not been evoked, yet, we must remember that Canada has challenged European chemical legislation at the World Trade Organization (WTO) 21 times, and with the U.S. challenged European bans on GMOs and hormones at the WTO. Also, Canada would be foolhardy to use CETA challenges when the agreement still is controversial and needs to be ratified in many EU countries.

With this track record, we can only imagine what Canada is negotiating behind closed doors. While the SPS Committee publishes agendas and reports on-line, much of the substantial conversations are not recorded in those reports. But with these documents, we get a better idea.

What is the CETA SPS Committee?

The Comprehensive Economic and Trade Agreement (CETA) established a number of joint inter-governmental committees to discuss “technical” issues and resolve differences in standards and regulations that affect trade. The Sanitary and Phytosanitary Joint Management Committee is one of 20 such committees (see full list of committees [here](#)) and it is in charge of food safety and animal and plant health regulations as they relate to trade. It builds on the extensive work at the SPS Committee that was established at the founding of the World Trade Organization back in 1995. CETA, in keeping with WTO and other international standards, aims specifically to enhance regulatory cooperation and harmonization to facilitate trade.

Many are concerned that these committees erode public regulation bringing them to the lowest common denominator. Regulatory cooperation is often [about removing or reducing regulation to meet corporate interests](#). In a detailed [analysis](#) by the Canadian Centre for Policy Alternatives and Powershift, it says regulatory cooperation is “at once, an ideology of how and when government should intervene in the market (to protect people or nature, for example), a set of institutional arrangements for regulating in a pro-business way and in cooperation with other governments, and a new privileged space for multinational corporations to intervene in national rule-making, frequently and at the earliest stages”.

In this view, consumer safety and environmental regulations are barriers to international trade. Different regulations – whatever they may be – allow governments to favor their own products that meet these standards. Unfortunately, though, these “barriers to trade”, are not “red-tape”, they are the instruments of democratic public policy to legislate in the public interest.

Concerns have been raised about the democratic deficit these “technical” trade committees entail, that are in fact empowered to amend treaties and make fundamental decisions concerning public health and the environment, with no Parliamentary or public oversight. Trade committees are empowered to make many decisions such as amend the treaty only monitored by the executive branch, not Parliament.

As stated by Dr. Wolfgang Weiß in his [essay that he wrote for food-watch](#): “The free trade agreements of the new generation establish a system of treaty committees that are authorized to perform indepen-

dent acts of sovereignty without having parliamentary legitimacy in their exercise of sovereignty. The delegation of significant sovereign decisions, particularly in the area of rule-making and treaty amendment, cannot take place without effective parliamentary control mechanisms. The ever-increasing proliferation of Treaty Committees threatens to establish an ever denser new level of sovereignty without steps being taken to democratically legitimize it.”

The Canadian delegation to this committee is led by the Canadian Food Inspection Agency (CFIA) whereas the European Union is represented by the European Commission’s DG Santé (Directorate General for Health and Food Safety), DG Trade and DG Agri (Agriculture and Rural Development) . Other Canadian government departments are also represented (Health, Natural Resources, Agriculture and Agri-Food Canada). Some European Union Member States (MS) are included: Netherlands, France, Ireland and Italy in 2018. In 2019, it was expanded to include Germany, Romania, UK, and Belgium.

Two in-person meetings of the CETA SPS Committee have taken place: Our Access to Information request only covers the first committee meeting on March 27-28, 2018 in Ottawa. A second meeting was held in Brussels on February 25-27, 2019 (see Government [summary online](#)). Meetings are annual, with correspondence and working groups operating between meetings to exchange information and resolve issues as they arise. Many of the documents and correspondence are still secret.

Officials are well aware of the considerable public interest CETA and food safety engender as acknowledged in the email exchange over the minutes (and the possibility of an access to information request (pp. 2-3). The Committee agrees to adopt the rules of procedure of the Joint Committee (which includes the power to make decisions and recommendations), so that agendas and short summaries of meetings will be posted online. This practice has been followed in Canada. The rules also allow for confidential discussions and there are many matters in the ATIP documents that have been redacted.

The SPS committee is just one of many committees dealing with food safety. Related work is ongoing in other committees that could affect food safety, notably Regulatory Cooperation (NB: [consultation with Civil Society on February 4, 2020](#)); Agriculture, and Biotech Market Access, that deals with GMOs. Summaries of all meetings to date can be found [here](#). Unresolved issues go to the overall CETA Joint Management Committee.

For the interests of transparency, we have put the document on line (link). The first 112 pages of the document are of limited interest as they have been already published on-line by the EU and Canada. Within this paper, the page numbers we refer to are the page numbers of our access to information request in the order compiled by the Canadian government.

Additional Elements of Context

The [Safe Food for Canadians Act \(SFCA\)](#) passed in 2012 and the [Safe Food for Canadians Regulations](#) (entered into force in January 2019, last amended in June 2019) are significant developments in Canada and they apply to imported, exported and domestic foods. The SFCA and SFCR lays out clear procedures and conditions under which food destined for human consumption can cross provincial or international borders. As such, trade is paramount in its provisions, that notably cover licensing, preventive controls and traceability

An analysis of their provisions is beyond the scope of this paper but they reinforce the regulatory harmonization agenda with the U.S. Through bilateral [regulatory cooperation committees](#) set up in the 2000s, Canada is already heavily been aligning regulations with those of the United States, its biggest export market. Both have made policies to attune their regulations to each other, streamlining them, reducing unwarranted “red tape”.

When the new NAFTA goes into effect, this process will only be codified and entrenched. The agreement contains [a good regulations chapter](#) ensuring that corporations have a seat at the table while regulations are being drawn with binding mechanisms to challenge regulations. NAFTA specifically precludes precautionary principle and insists on a “risk-based” approach.

In international trade, the U.S. and Canada have similar approaches to challenging regulations on hormones, GMOs, pesticides, glyphosate and many other issues. Often, the two are inseparable at the World Trade Organization as they attack regulations and campaign to defeat the precautionary principle that we will explain more, later.

What is the scope of issues discussed at the SPS Committee?

In the 320 pages of documents we received, there are many instances of Canada questioning and critiquing the EU regulatory approach. The two parties have long-standing differences in regulatory approaches.

EU's Precautionary Principle under the Knife

During the European Parliamentary debate on CETA, many expressed concerns about how the agreement would could endanger the precautionary principle. In 2016, foodwatch produced a legal analysis in [CETA, TTIP and the Precautionary Principle](#) arguing that the principle “was not sufficiently anchored in the text.”

The precautionary principle is legally binding EU-law, enshrined in Art. 191 Treaty on the Functioning of the European Union on the Union policy on the environment. “According to Art. 191 para. 2, “Union policy on the environment shall aim at a high level of protection ... [and] shall be based on the precautionary principle”.

In the essence, the precautionary principle stipulates that the EU or its member states may take action against a risk, even though that risk is not or not yet scientifically proven or if there is lingering scientific uncertainty.

The precautionary principle can be considered as a modern regulatory tool for the handling of risks for health and the environment. It is based on the fundamental idea that in order to promote high health and environmental protections, risks should be addressed at an early stage, before they materialize and cause damage. It thereby also aims to prevent possible high costs and losses caused by inaction in the case of hazards potentially materializing.

As the EU Commission's Communication on the precautionary principle from 2000 stipulates, recourse to the precautionary principle is to be taken if “a scientific evaluation of the risk which because of the insufficiency of the data, their inconclusive or imprecise nature, makes it impossible to determine with sufficient certainty the risk in question.”

In Canada, this principle is differently conceptualized and in the U.S., it is absent. It has not been endorsed by regulators. Both countries

believe that as long as the scientifically available data do not show a risk, then a product can be considered safe. This contradicts the EU precautionary principle, that also takes into account scientific uncertainty. The precautionary principle allows for and even demands to take into account criteria other than science when confronted with scientific uncertainty (implementation, social uncertainties, etc.). Furthermore, according to their understanding, a regulation is justified where it benefits society more than it costs society in the sense of a cost-benefit analysis.

The U.S. and Canada often criticize EU regulation based on the precautionary principle as unnecessary trade barriers in international fora, challenging them at the World Trade Organization.

Under the WTO-Sanitary and PhytoSanitary Agreement, members shall ensure that their measures are based on scientific principles and are not maintained without sufficient scientific evidence. These rules leave a very narrow room for the EU precautionary principle.

As a result, Canada and the U.S. used these rules to challenge EU legislation at the WTO Dispute Settlement Body. In the EC – Hormones decision, an EU import ban on US and Canadian beef produced out of cattle raised with growth hormones was found to violate the WTO-SPS-Agreement. In the EC – Biotech judgment, the EU's not allowing GMOs was declared to violate the WTO-SPS-Agreement. In both cases, the EU was unable to justify these regulations by referring to the precautionary principle.

In domestic policy, Canada has a pattern of not applying the precautionary principle in its chemical assessments allowing glyphosate, GMOs and many products not allowed in the EU. Canada often refers to its risk-based approach, that doesn't include the precautionary principle as "science-based", language that is repeated throughout the CETA agreement.

When CETA was signed, European Union Trade Commissioner Cecilia Malmström constantly reassured Europeans that the principle was safe. The Commission went even so far as to enshrine the precautionary principle in a Joint Interpretative Declaration which it claimed would reign in the agreement. However, the Council of Canadians produced [legal research](#) saying that the interpretative declaration was hollow and could only provide context: it simply couldn't amend substantive provisions in the text.

From looking at the documents from the CETA SPS committee, a different picture emerges. In discussions around minimum levels for pesticides and glyphosate, Canada reiterates its commitment not only to undermine the European precautionary approach, but repeatedly threatens to raise the issue at the World Trade Organization.

Canada’s position is stated as, “The difference between a hazard-based approach vs. a risk based approach that remain a cause for concern to Canada and to like-minded countries with respect to trade include the non-approval of widely-used pest products...Systematically, Canada would like the hazard-based approach to be addressed through regulatory amendments.” (pp. 163-164 [of the documents](#))

BACKGROUND

- The EU introduced Regulation (EC) 396/2005 to implement provisions relating to MRLs of food and feed of plant and animal origin and that these MRLs were to be based on risk assessments.
- Regulation 1107/2009 introduces hazard-based regulatory decision making requirements for the non-approval of all pest control products meeting hazard-based “cut-off” criteria solely on the identification of the hazard properties of substances that are classified as endocrine disruptors, carcinogenic, mutagenic, or as reproductive toxins, except by derogation (negligible exposure, default MRL). The Commission notified the WTO on the regulatory proposal before its entry into force.
- The difference between a hazard-based approach vs. a risk-based approach that remain a cause for concern to Canada and like-minded

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163-4 “The difference between a hazard-based approach vs. a risk based approach that remain a cause for concern to Canada and to like-minded countries with respect to trade include the non-approval of widely-used pest products.”

- Specifically, Canada is closely monitoring the Commission’s evolving policy options on the two main possible approaches regarding the maintenance of current import tolerances (ITs) and the setting of new ITs for active substances falling under the hazard based criteria (cut-off criteria) of Regulation (EC) No. 1107/2009: (a) current MRLs could be maintained in order to preserve the current ITs and IT requests handled on the basis of the usual risk assessment procedures required by Regulation (EC) No. 396/2005; or (b) MRLs could be lowered to the limit of determination (LOD) and new IT requests refused.
- [Redacted]
- Canada has conveyed in WTO TBT and SPS Committee meetings and in Brussels, that it is deeply concerned with the EU’s movement towards a hazard-based approach for regulatory decisions for pest control products, including most recently in a specific intervention on endocrine disruptors during the WTO SPS Committee meeting held on March 1-2, 2018. In addition, [Redacted]

“Systematically, Canada would like the hazard-based approach to be addressed through regulatory amendments.” Recommends REFIT regulations process as excellent moment to change regulations.”
 “Specifically, Canada is closely monitoring the Commission’s evolving policy options on the two main possible approaches regarding the maintenance of import tolerances. Regulations 1107/2009 396/2005 Threatens to take EU to the WTO.”

While the like-minded country is not stated, it is likely they are talking about the United States of America.

In a discussion on glyphosate and dimethoate, Canada reveals that its long-term strategy is to ensure that the EU abandons the precautionary principle:

“Canada is engaged in long-term advocacy strategies for the need for a science-based approach that takes into account the EU’s trade obligations, as well as international standards. Canada will continue to make interventions regarding glyphosate and dimethoate as appropriate both bilaterally, in discussions with the European Commission and the EU Member States in Brussels, and in the SPS and TBT (technical barriers to trade) committees at the WTO.” (p. 182)

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GOAL(S) AND OUTCOMES

- 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.
- Canada is engaged in long-term advocacy strategies for the need for a science-based approach that takes into account the EU’s trade obligations, as well as international standards. Canada will continue to make interventions regarding glyphosate and dimethoate as appropriate, both bilaterally, in discussions with the European Commission and EU Member States in Brussels, and in the SPS and TBT Committees at the WTO.
- The economic impact of potential measures on glyphosate is extensive, as this product is used in Canadian production of wheat, canola, pulses and soybean. Dimethoate is used in some Canadian production of cherries, and fresh cherry exports to France only totaled \$1.2 million since 2012. Canada’s cherry exports to France in 2016 and 2017 amounted to \$225,000 out of \$7.1 million exports to the EU during these years. However the industry considers France is an import market for the largest, most premium sizes.

In previous debates, the European Commission has vowed that CETA would never diminish strong European regulations. Since the committees were voluntary, it reiterated CETA would never oblige the EU to change its regulations. However, in the first CETA SPS meeting, Canadian pressure seems to be working. The European Commission reveals that its long term plan is to jettison the precautionary principle.

The document clarifies, “The long term goal for the EU is to move away from a hazard-based cut-off criteria as a basis for regulatory decisions.” (p.166)

GOAL(S) AND OUTCOMES

- The long-term goal is for the EU to move away from a hazard-based cut-off criteria as a basis for regulatory decisions.
- The problem is systemic in nature, and if hazard-based cut-off criteria become common place it threatens the continued market access of Canadian exports of agricultural commodities valued at over \$2.7 billion CAD annually.
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“The long term goal for the EU is to move away from a hazard-based cut-off criteria as a basis for regulatory decisions.”

Harmonizing with Canada is harmonizing with the U.S.

European partners should be made aware that Canada’s primary export market is the U.S (seven times bigger than exports to Europe). As is often repeated 75 per cent of Canada’s exports go to the United States. The Canadian government’s attempts to diversify trading relationships will not be done at the expense of U.S. market access. Rather, when the EU seeks regulatory harmonization with Canada on food safety, it is in fact needing to be compliant with U.S. rules that govern Canadian imports to the US.

On a number of occasions, Canada referred to the need to consult with the United States (and sometimes Mexico as well) in order to comply with European requests.

For example, in the documents, there is the case study of importing Spanish and Italian tomatoes with stems and leaves. Canada is concerned about tuta absoluta, a moth also known as the tomato leaf miner. As a result, it is currently not importing tomatoes with stems from Europe in countries where the insect is affecting crops unless methyl bromide fumigation has occurred.

Methyl bromide (MeBr) is an ozone-depleting substance that is not permitted in the EU but is used in Canada as a quarantine treatment for plant pests. Under the Montreal Protocol to the Convention on Substances that Deplete the Ozone Layer, countries agreed to phase out the use of ozone depleting substances including methyl bromide. Canada has rejected some EU imports because they have not been treated with MeBr and alternatives have been slow to emerge.

However, it becomes obvious that Canada’s real concern is not it’s the danger to its own domestic market, but Canada’s access to the U.S’s. Canada has been working significantly in regulatory cooperation forums with the U.S. around methyl bromide and tuta absoluta.

“The CFIA has aligned its Tuta absoluta requirements with those of the United States. Canada currently exports more than \$400M of tomatoes annually to the U.S. without the requirement of a phytosanitary certificate. The introduction of Tuta absoluta could jeopardize this export market and also increase the amount of CFIA resources required to perform export certification. Any changes to our requirement for freedom from vines, stems and calyces would only be completed in consultation with the United States.” (p. 144)

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On page 143, there is a mention of Canada writing to Italy saying it would not be “relaxing its ban” on stemmed tomatoes until “the CFIA (the Canadian Food Inspection Agency) were able to consult with our United States counterparts.”

A similar pattern emerges when the Netherlands, the UK and Scotland challenged Canadian import regulations on potato mini-tubers., “The U.S. is Canada’s most significant market for seed potatoes. It is essential that Canada and the U.S. adopt a similar regulatory approach and timelines to implement the 2010 international standard.” (p. 152)

Canada refuses to engage with this topic at the CETA committee, preferring to work with its NAFTA partners, “Canada considers this to be a multilateral issue, along with the United States and Mexico, and is committed to working on this issue through the North American Plant Protection Organization (NAPPO).” (p. 150)

5.2 EXPORTS OF POTATO MINI-TUBERS

LEAD GOVERNMENT OF CANADA DEPARTMENT AND CONTACT NAMES

- Canadian Food Inspection Agency, Gordon Henry, Potato Section

ISSUE

- The Netherlands, as well as the United Kingdom and Scotland, are asking Canada to implement the 2010 international standard to allow the importation of seed potato mini-tubers into Canada under a systems approach.

OBJECTIVE

- This is a responsive issue, Canada does not support including this topic as an agenda item for the CETA SPS JMC. Canada considers this to be more at a multilateral issue, along with the United States and Mexico, and is committed to working on this issue through The North American Plant Protection Organization (NAPPO).

BACKGROUND

- The import of propagative potato materials presents a high risk for introducing quarantine pests, particularly viruses and bacterial diseases.

• Potato propagative materials, such as mini-tubers, plantlets, and mini-

Canada refuses to talk saying, “Canada considers this to be a multilateral issue, along with the United States and Mexico, and is committed to working on this issue through the North American Plant Protection Organization (NAPPO).”

Canadian influence in EU regulatory process

Already, at the first meeting, Canada is demanding to be involved in the drafting of EU regulations, and is invited to participate in the EU processes.

Canada expressed interest around the new [EU Animal Health Law](#) (which broadens breadth of diseases covered including AMR) and the [Plant Health Law \(2016/2031\)](#). Briefings on these pieces of legislation were offered between meetings.

The [Animal Health Law](#) (published March 2016, to be applied within five years) covers transmissible diseases of aquatic and terrestrial animals. It does not cover animal welfare per se but names animal welfare as a matter to be considered in plans to combat and prevent the spread of disease.

Canada requested assurance that this law “will not negatively impact exports of Canadian animals, animal products and by-products to the EU)” and will not affect trade (p 131).

131 “Canada needs to be reassured that the new Animal Health Law will not negatively impact exports of Canadian animals, animal products and by-products to the EU.”



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- 1) Canada needs to be reassured that the entry into force of the new Animal Health Law will not negatively impact exports of Canadian animals, animal products and by-products to the EU.
- 2) Should the new legislation have an impact on trade with Third Countries, the CFIA will need to work with DG SANTE to ensure that measures are in place to prevent trade disruption as of the date of entry into force of the new regulations.

Canada asks bluntly, “Will there be an opportunity for Canada to comment the draft implementing and delegated acts?” The commission responds affirmatively, “The Commission indicates that it will duly consult experts, Member States, and other interested parties, EU stakeholders during the drafting of those delegated and implementing acts, in the spirit of better regulation.” (p. 131)

Plant Health Law 135 Canada needs to be reassured that the new Plant Health Law will not negatively impact exports of Canadian plants and plant products to the EU.

GOAL(S) AND OUTCOMES

- 1) Canada needs to be reassured that the entry into force of the new Plant Health Law will not negatively impact exports of Canadian plants and plant products to the EU.
- 2) Should the new legislation have an impact on trade with Third Countries, the CFIA will need to work with DG SANTE to ensure that measures are in place to prevent trade disruption as of the date of entry into force of the new regulations.

NEXT STEPS FOR THE CETA SPS JMC

- Plant Health Directorate officials should be present when DG SANTE makes the presentation during the CETA SPS JMC committee meeting.
- Additional questions from the CFIA may be sent to DG SANTE in writing.

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Again with the Plant health law, the pattern is repeated. Word for word, Canada asks, “Canada needs to be reassured that the new Plant Health Law will not negatively impact exports of Canadian plants and plant products to the EU.” It then asks how it needs to be reassured that it will not affect trade. On page 140, Canada boldly demands the draft of the implementing legislation.

In these cases, it is vague from the documents whether Canada indeed changed the legislation, but in the case of pesticides import tolerances, minimum residue levels of pesticides and glyphosate, Canada’s influence in the European policy making space becomes clearer.

Canada changes EU policy on MRLs for Pesticides

On the issue of important tolerances, or how much pesticides Europeans tolerate in their food supply, Canada appears to have had some luck getting the E.U. to change course.

From the documents, Canada and the EU diverge on “plant protection products” or pesticides, with Canada expressing frustration at the European Unions’ hazard-based approach to assessing the safety of synthetic chemicals that find their way into the food supply, rather than a risk assessment process.

Europe has much more stringent controls on chemical substances that could be endocrine disruptors or carcinogens than exist in North America. Using the precautionary principle, European regulations look not only at the end-point affect (often difficult to prove) but also the mode of action of any given substance according to its intrinsic properties.

During the SPS Committee meeting, Europe’s overall approach to hazard-based assessment was challenged by Canada, as well as the safety of specific chemicals that Europe was objecting to: picoxystrobin, dimethoate, glyphosate. Canada repeatedly asserted that food safety or animal health concerns should not disrupt trade.

Luckily for the EU, Canada was not able to influence legislation on dimethoate. Originally only banned in France, dimethoate is a pesticide used in orchards to kill the Western cherry fruit fly that affects cherries. [Générations futures](#) says that the research is clear: dimethoate is a carcinogenic, neurotoxin dangerous for both producers and consumers. Canadian [agro-food lobbyists](#) have demanded that Canada press France to reverse its ban, and for Europe to not ban imports of cherries treated with dimethoate.

After the meeting took place, on July 31st, 2019, the EU [banned dimethoate](#), allowing it to be used only until June 30, 2020. But they do seem to have some success working on the minimum residue levels of pesticides allowed into the EU.

In the documents, it is mentioned that of specific “deep concern” to Canada are EU regulations [1107/2009](#) (laying down rules for the authorization, placing on the market, use and control of plant protection products -- i.e. pesticides and biocides) and [396/2005](#) (on maximum

residue levels (MRL) of pesticides in or on food and feed of plant and animal origin).

When pest control products contain endocrine disruptors, carcinogens, mutagenic or reproductive toxins, the European Union places limits on the maximum amounts of these chemicals based on a hazard-based “cut-off”. If a substance exceeds these level, it is placed on a positive list of substances that cannot be imported.

The EU recently undertook an evaluation (REFIT) of these two regulations which was generally positive in terms of its impact on human health and the environment.

Canada wants to change the law, “Systematically, Canada would like the hazard-based approach to be addressed through regulatory amendment...Specifically, Canada is closely monitoring the Commission’s evolving policy options on the two main possible approaches regarding the maintenance of Import tolerances.” (p. 164)

“(REDACTED) however it is important for Canada to raise its systematic concerns in bilateral and multilateral forums to advance efforts to oppose the use of hazard based cut-off criteria in place of risk based approaches to regulatory decisions.”

“As a result the Commission is considering:

- 1) Maintaining existing ITS and possibly setting new ITS for imported food and feed**
- 2) Not maintaining existing Its and refusing IT requests for imported food and feed”**



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s.15(1) - International
s.21(1)(b)
s.21(1)(c)

countries with respect to trade include the potential for non-approval of widely-used pest control products

- Systemically, Canada would like the hazard-based approach to be addressed through regulatory amendments. The Commission’s Regulatory Fitness and Performance (REFIT) programme consultations on pesticide legislation (Regulation (EC) 1107/2009 and Regulation (EC) 396/2005) is one such opportunity to focus efforts in the long term as the REFIT process aims to clarify regulations and reduce regulatory burden.
- Specifically, Canada is closely monitoring the Commission’s evolving policy options on the two main possible approaches regarding the maintenance of current import tolerances (ITs) and the setting of new ITs for active substances falling under the hazard based criteria (cut-off criteria) of Regulation (EC) No. 1107/2009: (a) current MRLs could be maintained in order to preserve the current ITs and IT requests handled on the basis of the usual risk assessment procedures required by Regulation (EC) No. 396/2005; or (b) MRLs could be lowered to the limit of determination (LOD) and new IT requests refused.

On page 167, Canada mentions their ongoing dispute about endocrine disrupters at the WTO and says that it will raise the issue in appropriate fora. In the documents, this threat is repeated consistently in a veiled form reminding the EU to respect its WTO trade agreements.

The EU recommends that Canada participate in the REFIT regulations process. On page 166, it mentions that the REFIT process is open to foreign or third countries. Canada mentions its participation in this forum at numerous occasions.

NEXT STEPS FOR THE CETA SPS JMC

- Global Affairs Canada will continue to monitor developments in 2018-2019 and raise Canada's systemic concerns in appropriate fora.
- Advocacy efforts to influence current EU deliberations on policy options for substances meeting hazard-based criteria.

RECOMMENDED POINTS TO REGISTER

- Canada would like to reiterate, as we have previously expressed at the WTO TBT and SPS Committee meetings and in Brussels, that we remain deeply concerned with the EU's movement towards a hazard-based approach for regulatory decisions for pest control products.
- Canada is of the view that the hazard identification of a chemical is an important first step in the scientific risk assessment framework. However, it is our view that it is also imperative that potential adverse effects be put into context with consideration of potency, and the level of likely human and environmental exposure based on the conditions of use.
- More broadly, Canada seeks concrete assurance from the EU that decisions on setting MRLs and import tolerances will continue to be made on the basis of complete risk assessments, as set out in Regulation 396/2005.

Canada will influence "EU'S current deliberations on policy options for substances meeting hazard based cutoffs".

Next steps for the CETA SPS JMC.

Advocacy efforts to influence current EU deliberations on policy options for substances meeting hazard-based criteria.

As a result, the European Union indicates that the REFIT legislation will go one of two directions:

- 1) "Maintaining existing ITs and possibly setting new ITS for imported food and feed
- 2) Not maintaining existing Its and refusing IT requests for imported food and feed" (p. 166)"

It appears that they are saying that they will agree to lower their important tolerance to harmful pesticides.

In the end, the EU takes Canada's side. Under Goals and Outcomes, it is stated;

- >> The long term goal for the EU is to move away from a hazard-based cut-off criteria as a basis for regulatory decisions.
- >> The problem is systemic in nature, and if a hazard-based cut-off criteria becomes common place it threatens the continued market access of Canadian exports of agricultural commodities valued at over \$2.7 billion CAD annually.

The committee than reiterates twice (pp. 166-167) that it will undertake advocacy efforts to influence European regulations. So united through the SPS committee, the Europeans and Canadians are working to lower European pesticide tolerances.

Glyphosate

Glyphosate, the main active ingredient in the herbicide RoundUp, has been the subject of extensive public debate worldwide, including lawsuits for its cancer-causing properties, as well as new regulations at local and national levels. International scientific authorities have disagreed about its cancer-causing properties, as have scientists.

It is currently approved for use in Europe until 15 December 2022 but the Netherlands has banned glyphosate in public spaces and France and Luxembourg also stated its intention to ban glyphosate based on its own scientific authority.

The European Food Safety Authority (EFSA) has struck an Assessment Group on Glyphosate that will prepare the dossier for the next decision on renewal in 2021. Members include France, the Netherlands, Hungary and Sweden. The European Parliament has also been seized of the matter through a special committee that reported in January 2019 that concluded, the following: the public should be granted access to studies used in the authorization procedure; the EU's framework should stimulate innovation and promote low-risk pesticides; scientific experts should review studies on carcinogenicity of glyphosate; and data requirements for PPPs should include long-term toxicity.

Canada is “seriously concerned” about members states whose policies differ from the EU as a whole, and does not approve of either the precautionary approach or hazard-based assessments in general and says they will raise it at the WTO, “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.” (p. 182)

Canada also expressed concern about EU member states who took more restrictive positions on chemicals than the EU as a whole, such as France's proposed ban on glyphosate. In response to this pressure, “the EU committed to providing information on the legal procedures it takes when a Member State adopts as measure that is or that may be perceived by a third party to be inconsistent with ... the EU's international trade obligations.” (p. 7).

It concludes with a call to action. The joint committee will actively campaign against member states diverging from EU common rules, Under “Next steps for the CETA SPS JMC”, it is written: “Advocacy

efforts to influence EU deliberations on policy options for measures taken by Member States against scientific policy of the EU.” (p. 182)

NEXT STEPS FOR THE CETA SPS JMC

- Global Affairs Canada will continue to monitor developments in 2018-2019 and raise Canada’s systemic concerns in appropriate fora.
- Advocacy efforts to influence EU deliberations on policy options for measures taken by Member States against scientific policy of the EU.

“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.”

Picoxystrobin

Since 2017, Picoxystrobin is no longer authorized in the EU. This DuPont-manufactured fungicide is used on Canadian soybeans, wheat, canola, lentils and corn, whose exports to the EU totaled \$1.7 billion in 2016 (p. 171 - 75).

- IN LIGHT OF THE HUMAN AND ENVIRONMENTAL HEALTH REVIEWS UNDERTAKEN INTERNATIONALLY THAT HAVE DETERMINED THAT THIS ACTIVE INGREDIENT CAN BE USED IN AGRICULTURE, CANADA SEEKS CONFIRMATION FROM THE EU THAT IMPORT MAXIMUM RESIDUE LIMITS FOR THIS ACTIVE INGREDIENT WILL BE MAINTAINED IN ORDER TO MINIMIZE TRADE DISRUPTIONS.

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- IF NOT, CANADA SEEKS CONFIRMATION FROM THE EU THAT ANY PROPOSAL FOR CHANGES TO EXISTING MRLs WILL BE NOTIFIED TO THE WTO SPS COMMITTEE, AND THAT WTO MEMBERS WILL HAVE THE OPPORTUNITY TO PROVIDE COMMENTS TO THE EU.

While there has not yet been a change in import tolerance (IT) or maximum residue limits (MRLs), this product is on the agenda of the EC Standing Committee on Plants, Animals, Food and Feed (PAFF) and current MRLs are much lower in Europe than they are in Canada. (see p. 173 for levels on specific commodities).

Canada is also urging the EU “to consider all data that is made available”, presumably referring to the decision of the EU to exclude comments from the manufacturer or applicant when reviewing a substance.

Meat Inspection

Trade in meat is a long-standing issue between Europe and North America and has been adjudicated before the WTO on the issue of growth hormones (won by the U.S.).

There are many other issues related to safety of the meat supply, as underlined by the 2008 listeriosis outbreak in Canada where contaminated meat from Maple Leaf Foods killed 22 people. Recently an outbreak took place in the Netherlands and Germany. In 2014-2015, Canada undertook audits of meat inspection systems in several EU countries (for pork and poultry: Greece, Poland, Croatia, Slovenia; for beef: Ireland, Sweden, France, Italy) and there is a disagreement as to whether or not all the recommendations of the audits have been implemented. This issue has been referred to a technical working group.

Canadian meat producers [continue to advocate](#) for the acceptance of “vet drugs” and antibiotics in beef that are not allowed in the EU, and the use of hormones and beta agonists in livestock production (as per WTO rules). In recent media coverage, they have complained about the European legislative framework, calling it unfair. In the [Financial Post](#), cattle ranchers through the Cattlemen’s association bemoaned that CETA was only benefitting Europeans who were strangled by “death by a thousand regulations.”

“Some of the things choking the flow of trade include European health and quality standards require beef to be grown without hormones, prohibit the use of certain products to wash bacteria from meat, and add a testing requirement to assure ‘EU-compliance’ Lowe said.....And anyway, we believe in the use of science to grow the safest, most efficient beef. With Europe we can’t do that. Meeting the requirements costs too much.”

With redacted information from only one meeting, we can only speculate on what is happening behind closed doors in the CETA committees regarding beef and pork. It is fascinating that when European meat standards are discussed in pages 216-245, many pages of the text are almost completely redacted out.

In the document, it also talks about how the European Union wanted to set up a committee on animal welfare, but Canada felt it should just be dealt with by the larger regulatory committee. Canadian animal welfare legislation is considerably looser than that of the European Union. There are no enforceable mechanisms for treatment of farm animals in Canada, only voluntary codes.

CONCLUSION

Our access to information documents only give us a small glimpse into the inner workings of the CETA committees, but so far the view confirms our suspicions. In many instances, the European Commission has attempted to calm fears around how these regulatory cooperation committees would work arguing that they are not anti-democratic, that they will not weaken European legislation, and that those who claim otherwise are ill-informed. They point to ineffective mechanisms such as the CETA Joint Interpretative Declaration that is supposed to protect the precautionary principle, a fundamental pillar of European Law.

But in practice, through this regulatory committee, the European Union has opened itself up to aggressive attacks from Canada on the precautionary principle with the threat to take this to the WTO. While the appellate body of the WTO reforms itself, be assured that CETA also contains dispute mechanisms which Canada will attempt to use. It has also made vulnerable to potential harmonization with the U.S. regulations as Canada actively tries to tune its regulations to stay in step with the U.S., the destination for most of its exports. These regulatory harmonization activities will only strengthen once the new NAFTA is adopted with its new good regulations chapter. Furthermore, Canada has shown that it is using its leverage within this committee not only to influence European legislation on important issues such as glyphosate and pesticide minimum levels, but it is turning the committee in an active lobbyist against certain EU regulations.

With the meat section completely redacted out, and with many committees not in our view, and with only one meeting, we can only speculate on what is happening in other committees on GMOs, on technical barriers and so on. We can only assume that this is a continuation of Canada using its international trade regimes to dilute regulations, with its partner the United States of America.

At the minimum, there must also be serious democratic checks and balances to this very dangerous committee system that empowers corporate lobbyists.

It is not too late to slow down the train of corporations gaming our public interest regulations in CETA. Many EU countries still have to ratify the agreement.

But, with more dangerous provisions such as the investor state dispute mechanisms that allow corporations to sue states over new regulations yet to come into play, member states must not continue to ratify the CETA agreement. There has to be a serious change in business as usual with these corporate-first agreements.



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