Canadian Horticultural Council | Conseil canadien de l'horticulture

La voix des **producteurs de fruits et légumes du Canada**

Presentation by the Canadian Horticultural Council

to the Standing Senate Committee on Foreign Affairs and International Trade

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Topic: **Bill C-30, the Canada-European Union Comprehensive Economic and Trade Agreement Implementation Act**

The Canadian Horticultural Council represents fresh fruit and vegetable growers across Canada, and we have been doing so for almost 100 years. Competitiveness is a high priority so we look forward to increased opportunities through the implementation of CETA[1].

Yes, a free trade agreement that eliminates tariffs between Canada and the EU is important, but we need to make sure our products are not blocked by any technical barriers in the process. There are three critical technical barriers to trade we would like to address: 1) Non-harmonized maximum residue limits – meaning the maximum acceptable level of pesticide or fungicide remaining on a product, 2) a country's outright refusal of an entire commodity because of the existence of a crop protection product registered in Canada, and 3) the EU's tendency to make in-or-out regulatory decisions based on the simple existence of a hazard, whereas Canada opts to mitigate risk instead.

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[1] Based on 2016 figures, imports from ($192.5 million) and exports to ($84.7 million) the EU are quite low as compared to the US, the main export market and source of imports for horticultural commodities ($2.2 and $4.7 billion, respectively) (Statistics Canada – CATSNET, consulted April 5, 2017). Considering the population of the EU (over 500 million) as opposed to the US (350+million), there should be interesting opportunities for expansion for Canadian exports.

Regarding imports, there is some concern that fair trading practices be upheld to ensure that commodity dumping does not occur as was the case with greenhouse peppers from the Netherlands prior to 2010. Additionally, we would expect that the same requirements that will be required of Canadian producers under the Safe Food for Canadians Act and its Regulations be also applied to product imported under CETA.

Regarding exports, while the greenhouse industry is sceptical of the existence of any opportunities, representatives of commodities such as apples, blueberries and cherries have expressed interest in increasing exports to the EU. There are, however, some grave concerns regarding technical non-tariff trade barriers.

1. Maximum Residue Limits (MRLs)

First of all – Canada and the EU do not agree on maximum acceptable residue limits[2] for many products, which means we don't agree on how much pesticide or fungicide is allowed to remain on certain produce when it enters the market. This poses a huge technical barrier to trade in the implementation of CETA[3].

For example, Nova Scotia used to export apples to the EU, but the province stopped doing so ever since the EU dropped its maximum residue limit for Diphenylamine, a common storage treatment for apples, to 0.01 ppm. In Canada, the maximum residue limit for Diphenylamine is set at 5 ppm. In the U.S., it's set at 10 ppm.

The problem isn't confined to apples[4]. And quite often a default is used. Without harmonised maximum residue limits, the risk is often too high for growers to venture into new markets. A producer in full compliance of Canadian limits can have their crop rejected by the destination country due to residue violation.

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[2] Maximum Residue Limits (MRLs) are set by Health Canada through the Pest Management Regulatory Agency. Health Canada sets science-based MRLs to ensure the food Canadians eat is safe. The MRLs set for each pesticide-crop combination are set at levels well below the amount that could pose a health concern. Typically, an MRL applies to the identified raw agricultural food commodity as well as to any processed food product that contains it. However, where a processed product may require a higher MRL than that specified for its raw agricultural commodity, separate MRLs are specified. If it is determined that an unacceptable risk exists, the product will not be permitted for sale or use in Canada. Taken from: http://www.hc-sc.gc.ca/cps-spc/pest/part/protect-proteger/food-nourriture/mrl-lmr-eng.php

[3] There have been efforts by international organizations such as WTO and Codex to develop a world standard but so far there is none recognised by all countries. The majority of countries are setting their own tolerance levels and the result is inconsistent MRL standards among trading partners. There is support for this viewpoint in academic literature: Achterbosch et al. (Achterbosch, T., Engler, A., Rau, M., Toledo, R. (2009). *Measure the measure: The impact of differences in pesticide MRLs on Chilean fruit exports to the EU*. Paper presented at the International Association of Agricultural Economists Conference, Beijing, China, August 16-22) found a 5% reduction in EU's regulatory tolerance levels for MRLs would lead to a 14.8% decline in export volumes from Chile, for example. They conclude exports are highly sensitive to changes in MRLs. However, there is consensus that aligned or streamlined process on MRLs can reduce the risks and costs and therefore boost trade overall. Use of the Codex MRLs, collaborating on completing them, and adopting them would be a way through which Canada could lead by example.

[4] Other examples of differences in MRLs established between Canada and the EU are shown for blueberries:

	Canada	EU
Azinphos-methyl	2 ppm	0.05 ppm
Captan	5 ppm	30 ppm
Carbaryl	7 ppm	0.01 ppm
Chlorothalonil	0.6 ppm	0.01 ppm
Dimethoate	1 ppm	0.02 ppm
Fenhexamid	4 ppm	15 ppm

Four out of six of these active ingredients pose a problem for exports.

Trade negotiators need to lobby for harmonized maximum residue limits, without allowing politics or public opinion to get in the way of science-based decisions[5].

2. Outright refusal of a commodity based on existence of a product registered in Canada

The second main non-tariff barrier to trade with the EU is when a country outright refuses to import a commodity based on the existence of a product registered in Canada.

An example here is France, which has banned the import of cherries from any country that has registered the insecticide dimethoate. The ban is not just on products that exceed maximum residue levels, even if set to zero – it's a ban on everything. In other words, a cherry grower who does not even use dimethoate is banned from shipping to France, simply because the product is registered for use in Canada.

As dimethoate is registered in Canada for use on other major commodities, like canola, wheat, barley, oats, flax, and soybeans, in addition to most fruit and vegetable groups, future exports to the EU could be severely impacted for a large swathe of Canadian agricultural products. Implementation CETA needs to address this type of non-tariff barrier rapidly and decisively as we don't know where the next outright ban will come from.

3. Hazard-based in-or-out regulatory decisions

The third and last non-tariff barrier I will address is the fundamentally different approach of the EU to make regulatory decisions based on the simple existence of a hazard, whereas Canada looks at actual use cases to see if we can mitigate risk while continuing to use a product. [6]

The EU approach would be the equivalent of refusing the use of electricity because of the risk of shock. We all know that, if appropriate safeguards are put in place, the risk of electrocution is minimal.

We do not want to lose products that Canadian scientists and regulators have approved, simply due to political pressures. Implementation of CETA must ensure that risk mitigation, based on science, is recognized in the registration of crop protection products.

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[5] The WTO TBT agreement, which Canada and the EU refer to in the CETA, states: "Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them". Canada should insist on the use of science-based trading tools and international standards, such as the Codex MRLs, where they exist.

[6] This is the case of endocrine disruptors. For more information, see: Brenner, K.D. 2014. Potential trade effects on world agriculture exporters of European Union regulations on endocrine disruptors.

Conclusion

In conclusion, despite the new markets created under CETA, our sector is concerned with non-harmonized maximum residue limits, the outright refusal of a commodity if Canada has particular crop protection product registered for it, and the EU's approach to making regulatory decisions based on hazard rather than risk. These technical barriers to trade will severely hinder Canada's ability to grow export markets to their full potential, regardless of tariff elimination.

Thank you for your time.

I will now pass the mic to Ken Forth, Chair of the CHC Trade and Marketing Committee.

Ratification of ILO Convention 98 (Right to Organize and Collective Bargaining)

The Canada - European Union Comprehensive Economic and Trade Agreement (CETA) commits Canada to the ratification and effective implementation of the eight fundamental Conventions of the International Labour Organization (ILO). Canada has ratified seven of the fundamental Conventions but has not yet ratified the Right to Organize and Collective Bargaining Convention, 1949 (Convention 98).

The Government of Canada is now considering ratifying Convention 98 to meet its commitment under CETA.

This submission prepared for Labour Issues Coordinating Committee (a committee of the Ontario Federation of Agriculture) for Ontario growers sets out the concerns of farmers concerning the possible ratification of Convention 98.

Impact of Convention 98 on Canadian Labour Laws

Convention 98 requires that ratifying states promote the right to bargain collectively and, specifically, to take steps to promote and protect negotiations between worker representatives and employers for the purpose of reaching collective agreements.

Current laws in the federal and provincial jurisdictions comply generally with the underlying principles of Convention 98 (in fact, Canada has robust labour laws that protect and promote collective bargaining for most workers). However, there are specific aspects of Convention 98, as interpreted by ILO supervisory bodies that may conflict with basic and longstanding elements of Canada's traditional labour and employment law system.

Indeed, some ILO supervisory bodies (including, for example, the Committee on Freedom of Association) have expressed rigid and often political views on the requirements for satisfying Convention 98. While the views of these bodies may not have a *direct* legal effect on the interpretation and application of laws in ratifying states, it is equally clear that Canadian courts - including the Supreme Court of Canada - look to the work of these bodies in defining the nature and scope of the constitutional protection for freedom of association in section 2(d) of the *Canadian Charter and Rights and Freedoms*.

Concerns re: Ratification of Convention 98

Canadian courts' reliance on the views of the ILO supervisory bodies raises serious concerns in connection with the ratification of Convention 98. Specifically, the committee is very concerned that the ILO supervisory bodies' views on some basic issues around union recognition, collective bargaining, and the ability to strike are inconsistent with the more flexible and policy-based approach taken by the federal and provincial governments across a range of sectors, including agriculture.

For example, until now, governments in Canada have generally been free to develop alternative labour relations models for sectors where the traditional system is considered to be inadequate or unworkable. Agriculture is one such sector. The Supreme Court of Canada itself has accepted that the *Charter* permits governments to implement non-traditional labour regimes that are compatible with the unique characteristics of farming.[7]

In contrast, the ILO Committee on Freedom of Association has found that the freedom of association requires that farm workers in Ontario be entitled to a traditional form of collective bargaining (including the ability to go on strike).[8] This finding is directly at odds with the Supreme Court of Canada's conclusions on this issue.

Other examples of the divergence between Canadian and ILO labour norms include:

- ***Recognition of Minority Unions*** - The ILO supervisory bodies believe that labour legislation should require the recognition of "minority unions" for collective bargaining purposes. Recognition of minority unions is generally unheard of in Canadian labour law.

- ***50% Threshold for Certification*** - The ILO supervisory bodies believe that a requirement for majority worker support as a precondition for union certification can be incompatible with Convention 98. Related to this, they believe that an employer should be required to recognize and bargain with *all unions who represent workers in the bargaining unit* if one union does not have majority support. However, virtually without exception, Canadian labour legislation

[7] *Ontario (Attorney General) v. Fraser*, 2011 SCC 20.
[8] ILO Committee on Freedom of Association Case No. 2704 (Canada) (March 2012)

establishes a requirement of majority worker support as a precondition to certification.

- ***Compulsory Arbitration Prohibited*** **-** The ILO supervisory bodies believe that "compulsory" interest arbitration (*i.e.* a *requirement* to participate in interest arbitration instead of industrial action) is contrary to Convention 98. However, labour legislation in all Canadian jurisdictions requires the parties to participate in interest arbitration rather than industrial action in certain sectors or situations. For example, in Ontario there is currently an absolute prohibition on strike or lockout activity in respect of: (1) any person employed as a "firefighter," and (2) all unionized employees of the Toronto Transit Commission. In the past, Ontario also prohibited strikes and lockouts in the agriculture sector and, instead, required the parties to participate in interest arbitration.

Conclusion

Based on the above, there are important differences between basic features of Canadian labour law and Convention 98. These differences may have significant practical implications for Canadian labour law in light of Canadian courts' increasing reliance on the views of the ILO supervisory bodies. This is of particular concern in a non-traditional sector like agriculture where ILO supervisory bodies would insist on the application of rigid and inappropriate collective bargaining principles that ignore the realities of Canadian farms and the conclusions of the Supreme Court of Canada in this area.