National Farmers Union Submission
to the House of Commons Standing Committee on International Trade study of Bill C-30,
the Canada-European Union Comprehensive Economic and Trade Agreement Implementation Act
November 30, 2016

The National Farmers Union (NFU) is Canada's largest voluntary direct-membership, non-partisan national farm organization. The NFU consists of thousands of farm families from across Canada who produce a wide variety of commodities, including grains, livestock, fruits and vegetables. Founded in 1969, the NFU's roots go back more than a century. The NFU works toward the development of economic and social policies that will maintain small and medium-sized family farms as the primary food-producers in Canada.

The NFU urges the House of Commons Standing Committee on International Trade Committee to recommend that Members of Parliament vote against Bill C-30 for the following reasons:

- CETA is unnecessary for trade: Canada has always traded with Europe, there are few tariffs, and there are established institutions such as the World Trade Organization (WTO) already exist to manage tariffs and govern trade disputes.

- CETA creates an extensive regime of rules and restrictions that severely impair the autonomy of Canada's current and future democratically elected federal, provincial and municipal governments, while creating new powers and opportunities for multinational corporations to impose their priorities. CETA essentially imposes a new undemocratic constitution that protects the interests of global corporations and their shareholders.
- CETA's rules accelerate the concentration of economic power into the hands of ever fewer and larger global corporations at the expense of smaller Canadian businesses, including farmers and other small and medium-sized companies. Concentrated economic power exacerbates the imbalance of political power, as the largest corporations have capacity to lobby most aggressively to obtain laws and regulations for their own benefit. They also use their growing market power to offload costs and extract an ever greater share of the wealth produced by Canadians.
- CETA prevents Canada from restricting the movement of capital across our borders, which could result in our economy being subjected to wild currency fluctuations that would damage our ability to trade.
- CETA's provision for corporations to ask our courts to order precautionary seizure of the alleged infringer's moveable and immoveable property, the freezing of bank accounts and other assets for alleged intellectual property rights infringement (including Plant Breeders Rights) is unjust and creates undue fear among farmers and others.
- CETA prevents all levels of government from using their purchasing power to promote local and regional economic development in contracts that exceed fairly low dollar thresholds. CETA gives European corporations the right to compete with Canadian small businesses for government contracts.
- CETA offers no net benefit to Canadian agriculture. The market access for beef, pork and other commodities is largely illusory, while the transfer of a significant share of Canada's dairy market to the EU will harm Canadian farmers and rural communities.
    - The EU will not accept beef or pork produced with certain veterinary drugs that are approved in Canada and prohibited in the EU. Canada's export-oriented production currently uses these drugs.
    - Canada does not use its existing market access for beef and pork produced without these drugs
    - CETA does not increase access for Canadian GMO crops such as canola and soybeans
    - The EU access to Canada's cheese market shrinks Canada's domestic market such that potential livelihoods for 400 new entrant dairy farmers is eliminated, harming the next generation of farm families and preventing spin-off economic benefits in their communities, including emerging artisanal cheese production.

We would now like to provide more detail on each of the above points.

CETA is Implementing Global Corporate Governance

Implementing CETA would in effect amend our Constitution in a hidden way by restricting the range of action available to federal, provincial and municipal governments. CETA would limit the powers of elected governments to make laws, bylaws, regulations and policy decisions that conflict with this agreement. Instead of Canadian courts deciding whether a controversial law is *ultra vires* (allowed under our Constitution), an unelected trade tribunal could decide that a given law, while legal under our Constitution, is in violation of CETA and order a government to pay restitution to a corporation and/or change its law.

CETA, along with NAFTA and other trade and investment agreements are not really about promoting trade –effective mechanisms such as the WTO already exist to manage trade – but rather, they are mechanisms to create rules that govern the relationship between governments and corporations. Global corporations' power and control over national economies are enhanced by these agreements. At the same time, "trade agreements" such as CETA dull and weaken both the economic and legal tools that national governments can use to shape their futures according to citizens' aspirations.

While CETA restricts the scope of duly elected governments, it provides privileges and benefits to foreign investors, businesses and certain employees of these businesses. CETA accords "Most Favoured Nation" status to investors and investments from EU countries, requiring sub-national governments (provinces and municipalities) as well as the federal government, to give European businesses and their owners this status. Once CETA is adopted, the privileges given to European businesses, with the exception of access to government procurement, will be extended to businesses in the USA and Mexico as well, because they are entitled to "Most Favoured Nation" status by way of NAFTA.

There are many more aspects of this agreement one could reference. But, when it is held up to the light of day, it is nothing more than a corporate Bill of Rights and a giant bill to be paid by the citizens of Canada and Europe.

Investor-State Dispute Settlement (ISDS), also called Investor Court System (ICS)

Investor-state dispute settlement (ISDS) mechanisms give foreign corporations the ability to directly sue federal, provincial and local governments for compensation if the corporations believe environmental, public health or other domestic safeguards hinder their opportunities to make a profit or gain market access. These investor-state disputes are heard before private commercial arbitrators who are paid for each case they hear. Under Chapter 11 (an ISDS mechanism) of the North American Free Trade Agreement (NAFTA) Canadian governments have been sued thirty-five times. In some cases the disputes have been settled between the two parties and in some cases the disputes have been sent to an arbitrator. So far, Canadian taxpayers have paid $171.5 million to corporations as a result of these lawsuits and some environmental regulations have been repealed or watered down. [i]

The investor protection measures included in CETA arguably grant even greater rights to foreign investors than the rights granted in NAFTA.[ii] The "legitimate expectations" under the "fair and equitable treatment" (FET) clause, provide investors with a tool to fight regulatory changes which they deem to not be in their interest. The FET concept is the tool that is most often used by corporations in ISDS cases and it is the most successful argument in front of tribunals. Tribunals have consistently interpreted FET as providing a stable regulatory environment to corporations, even if new or amended regulations are implemented as a result of new knowledge or democratic mandate.

In response to public pressure and concerns over water pollution, the Province of Quebec implemented a moratorium on fracking in 2011. In 2012, Lone Pine Resources launched a NAFTA challenge and is seeking $250 million plus interest in damages. In 2004 the Province of Newfoundland and Labrador implemented a requirement that off-shore oil companies must invest a portion of revenues in local research and development. Mobil Investments and Murphy Oil filed a NAFTA claim against Canada in 2007. Despite the inclusion of a "reservation" for research and development requirements in the NAFTA, which was believed to provide protection for these measures, in 2012 the arbitrators ruled against Canada.[iii]

Investors are using ISDS mechanisms as a lobbying tool. They can go to regulators and legislators with the message that an

ISDS suit might be initiated if they take an action in the public interest that may hinder the company's ability to make a profit or to access a market. Conscious of the limited financial resources available to protect the public interest from legal challenges launched by deep-pocketed corporations, governments may decide it is fiscally prudent not to bring in the new regulations. CETA strengthens and codifies investor rights by allowing wider interpretation of concepts such as "fair and equitable treatment". CETA gives investors a more powerful weapon to push their agenda and invoke "legislative chill".

Intellectual Property Rights and CETA

Within CETA's hundreds of pages there is a section specifically about enforcement of "intellectual property rights". *Intellectual property* refers to the private ownership of knowledge, inventions, creative works and techniques – cultural production, including seeds, that was once freely shared. Intellectual property rights such as copyright, trademarks patents and plant breeders' rights (PBRs) are legal tools to restrict access and allow creators/owners a limited time (20 years for PBRs) to collect royalties from those who would like to use the protected knowledge.

Canada does not permit patenting of higher life forms such as plants, but does allow gene sequences to be patented. These patented genetic constructs are then incorporated into the cells of plants through the processes of genetic modification. Biotech companies have been able to use their patent rights to control access to the seed of genetically modified (GMO) varieties of canola, soybeans, sugar beet and corn.

Plant Breeders' Rights (PBR) are intellectual property rights (IPR) defined through national legislation. The rules to recognize and define the private ownership of new plant varieties were established in the 1960s through the UPOV Convention.[iv] Since then, the seed industry has used both PBRs and gene patents, along with contracts and hybrids[v,] to increase their control of, and revenues, from commercial seed production and from selling seeds to farmers world-wide. These tools allow companies to privatize the new varieties they derive from the thousands of years of custom and tradition of farmers, indigenous people and public plant breeders to create and share seeds among each other.

PBRs have helped facilitate concentration within the seed industry. Just ten global corporations now control over three-quarters of the world's commercial seed trade.[vi] With impending Monsanto/Bayer, Dow/Dupont and Syngenta/ChemChina mergers, six companies would control most of the world's seed. If CETA is ratified new enforcement measures for IPRs will permit these companies to become even more powerful. These enhanced enforcement powers will be used to extract even more wealth from Canadian farmers and their communities, to intimidate and to promote a culture of fear.

Under CETA's Section 22, Article 12, Canada and Europe agree to co-operate to promote and reinforce the UPOV[vii] PBR system.[viii] Canada has agreed to bring in new IPR enforcement measures as part of the deal. To comply with CETA, Canada will have to allow IPR holders to use the courts to seek injunctions against suspected infringers – such as a farmer accused of having a protected plant variety or a gene patented variety of seed -- before determining whether or not there was an actual violation.

Judges will be granted authority to order the seizure of assets, equipment and inventory of suspected infringers – even before the case is heard in court.[ix] In light of the Supreme Court's 2004 Schmeiser decision which upholds patent infringement claims regardless of how the GMO seed in question got into a farmer's field, this clause is chilling.

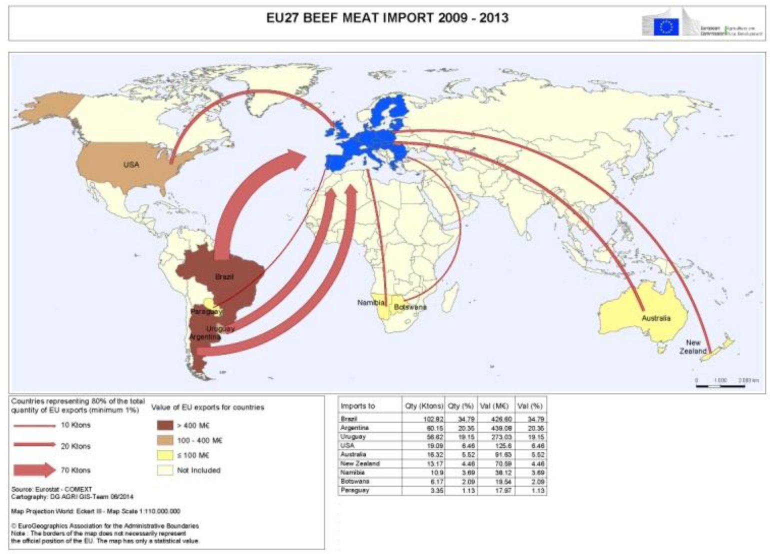
Local Procurement

In Canada the local food movement is growing, and many urban consumers are seeking out food produced by farmers in their own areas. Many Canadian municipal councils, schools, prisons and hospitals are implementing local food procurement policies. They are hearing from their constituents who want to support and promote "home grown" food and they also anticipate multiple economic and social benefits that flow from a robust local farming and small-scale food processing economy. CETA would severely hamper, if not stop, the advance of local food procurement policies. It requires public procurement at all levels of government to be open to EU businesses on an equal footing with Canadian companies, and prohibits local content requirements for all contracts above the annual threshold of approximately $330,000.[x] CETA prevents public bodies from dividing their procurement contracts into smaller chunks to avoid crossing the threshold.[xi] Thus

CETA impinges on the expressed wishes of Canadians to use procurement particularly for, but not limited to, food as a mechanism to support locally valuable economic activities. This is profoundly undemocratic, and in the case of food procurement, contrary to food security and food sovereignty.

Canada already has unused beef and pork market access

In 1996 Canada began a protracted WTO trade dispute over Europe's ban on beef produced with growth hormones. Canada tried to force the EU to accept imports of beef produced with growth hormones. In 1997, the WTO panel decided that the hormone ban was a non-tariff trade barrier, but Europe maintains the ban based on the precautionary principle regarding health concerns. The dispute continued until an understanding was reached in March 2011. As a result, the EU pays higher duties to Canada on certain products and agrees to buy hormone-free beef from Canada. **We can now sell 23,000 tonnes per year of hormone-free beef tariff-free. Yet in 2013, we sold only 1,000 tonnes of beef (carcass weight equivalent)[xii] into the EU.**

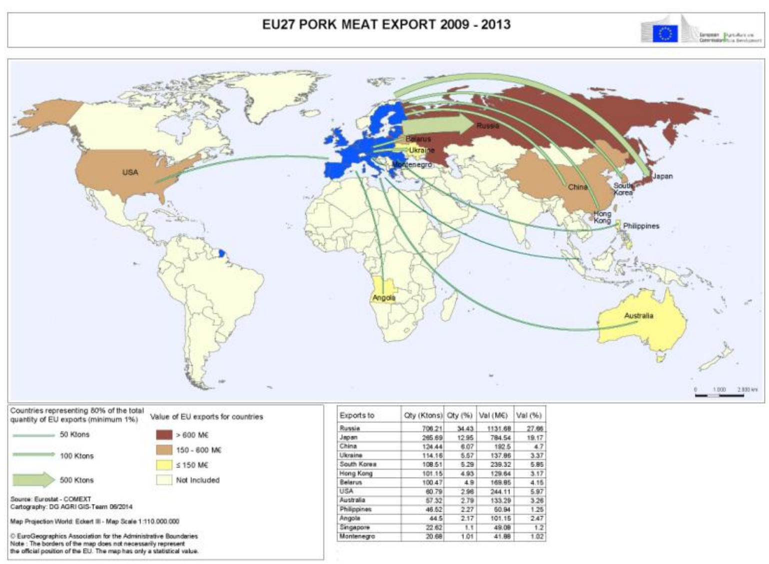


Map #1 Source: European Commission, Agricultural Trade Statistics

Canada's beef and pork processing sectors are highly concentrated. Two foreign-owned companies, Cargill (USA) and JBS (Brazil) own over 90 percent of Canada's federally inspected beef packing capacity

CETA will not lift the EU's long-standing ban on beef produced with the use of growth hormones. The EU imports most of its beef from Brazil, Argentina and Uruguay. Brazil banned the use of growth hormones in beef production in 1991 to maintain access to the European market. Our competition, therefore, is from South America. EU imported 222,000 tonnes of beef from MERCOSUR (Argentina, Brazil, Paraguay, Uruguay, and Venezuela) in 2013 (see Map #1). The EU exported 273,000 tonnes of beef in 2013, mostly to Russia.

Europe prohibits pork produced using ractopamine (Paylean), a drug that promotes a lean carcass that is commonly used by Canadian hog producers and increasingly by the beef feedlot industry. Canada allows ractopamine in pork production, but the CFIA offers inspection services to exporters of ractopamine-free pork. **Canada already has access to WTO-wide tariff-free quota of 7,000 tonnes of pork,** and is also allocated 4,624 tonnes of pork at tariff levels of €233 to €434 per tonne. Canada has additional access to a WTO-wide quota of 70,390 tonnes at the same tariff levels, or 16 to 27 cents per pound at today's exchange rate (December 2014).[xiii] **In 2013 Canada exported only 100 tonnes of pork (carcass weight equivalent) to the EU.**



Map #2 Source: European Commission, Agricultural Trade Statistics

Canada does have slaughterhouses that meet the EU's standards. Europe has specific health and food safety requirements regarding slaughter and requires inspection and traceability measures to ensure that animals have never been treated with any of the drugs it has banned. Europe recognizes the Canadian Food Inspection Agency's (CFIA) competence to provide meat inspection services that meet its requirements for exporters. Canada has both the regulatory and technical capacity to meet Europe's expectations regarding meat production, however we have just three EU-approved abattoirs that handle pork: Kanata Meats, F. Menard's Agromex (which sells to Mexico) and Du Breton; and two that handle beef: Viande Richelieu and Canada Premium Meats.[xiv]

These facts demonstrate that Canada has the technical ability to serve the European market and a large amount of tariff-free quota that is not being used, however the Canadian beef and hog production sectors are not producing the type of beef and pork that European consumers demand.

Europe does not need to import pork: it is already the world's largest exporter at over 2 million tonnes annually (more than Canada's total production - see Map #2). Canada is unlikely to significantly increase beef exports to the EU as Europe has obtained a secure supply of hormone-free beef from South American countries which have a low cost of production and that have outlawed growth hormones.

To give up valuable market share in the dairy sector as a putative trade-off for obtaining access to a market that we already have and are not using is a betrayal of Canadian farmers.

Increased exports do not increase farmers' incomes

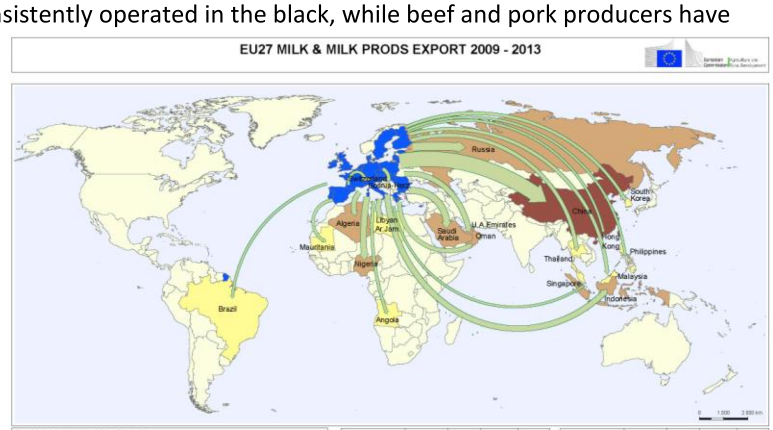
Canada's annual agri-food exports have increased dramatically from less than \$2 billion in 1970 to over \$43 billion in 2012, a twenty-fold increase. Total realized net farm income has hardly changed, rising from \$1.2 billion to \$7.1 billion in the same period, only six times the 1970 level. Since 1971 Canada has lost nearly half of its farmers. The number of farms dropped from 366,128 to 205,730 in 2011.[xv]

From the farmer's point of view, export market growth has not delivered promised prosperity. Due to government policy decisions over the past few decades, beef and pork, as well as the grain and oilseed sectors, are export-dependent and thus subject to price volatility due to currency fluctuation and production conditions in other countries. Dairy, on the other hand, has remained primarily a domestic sector, due to federal support for high tariffs that prevent dumping cheap imported milk into our market.

Graph #2 above shows that dairy producers have consistently operated in the black, while beef and pork producers have been forced to sell below cost. Exports of dairy have remained low and constant through the same period, while exports of meat, live animals and meat products have increased. **Increasing the volume of beef and pork sold at prices below the cost of production, as CETA apparently aims to do, is not a solution: it is a problem.**

CETA would weaken our supply management system

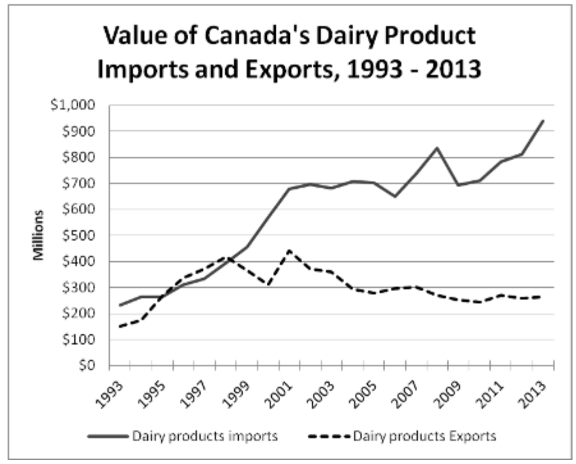
Europe exports more than twice as much cheese as Canada produces. The EU will easily fill any additional quota provided. In 2013 Canada produced 460,659 tonnes of cheese of all kinds.[xvi] In 2013 the EU *exported* 787,000 tonnes of cheese and curd.



Exports to	Qty (Ktons)	Qty (%)	Val (M€)	Val (%)
China	185.88	10.6	275.85	9.27
Russia	98.01	5.59	122.36	4.11
Saudi Arabia	81.88	4.67	173.94	5.85
Nigeria	74.76	4.26	185.25	6.22
Indonesia	69.93	3.99	100.87	3.39
U.A.Emirates	64.06	3.65	114.54	3.85
Libyan Arab Jam.	60.07	3.43	74.29	2.5
Algeria	60.03	3.42	154.22	5.18
Oman	51.23	2.92	128.21	4.31
Thailand	47.8	2.73	57.26	1.92
Bosnia-Herz.	44.22	2.52	31.03	1.04
Malaysia	42.94	2.45	49.55	1.67
South Korea	38.2	2.18	80.02	2.69
Angola	35.36	2.02	62.4	2.1
Mauritania	35.33	2.01	32.94	1.11

Exports to	Qty (Ktons)	Qty (%)	Val (M€)	Val (%)
Switzerland	33.89	1.93	31.93	1.07
Philippines	30.32	1.73	46.37	1.56
Brazil	29.96	1.71	28.77	0.97
Hong Kong	29.56	1.69	59.51	2.0
Singapore	28.32	1.62	49.96	1.68

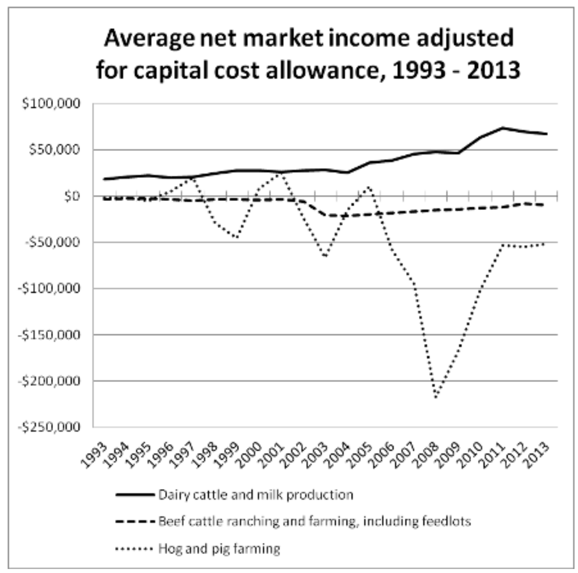
Map #3 Source: European Commission, Agricultural Trade Statistics



Graph # 1 Source: Statistics Canada

The EU already has tariff-free access to 13,608 tonnes of Canada's cheese market. CETA gives it an additional 18,500 tonnes. Currently, Canada allows 5% of our cheese market to be filled by European imports and CETA would increase that amount to 9%. Europe would have no trouble selling us more – their exports already exceed Canada's total production (see Map #3). If Canada increases access for EU cheese imports, the precedent will make it easier for Europe to ask for even greater access in the future. There would be a corresponding loss of market share for Canadian producers.

Cheese is a highly concentrated dairy product – it requires about 10 kilograms of fluid milk to make 1 kg of cheese. Thus, the 18,500 tonne increase in the EU's share of our cheese market represents an approximate 185,000 tonne loss of fluid milk production for Canadian dairy farmers. Such a loss would cascade through the sector, resulting in lower incomes for dairy farmers, fewer viable dairy farms and a reduction of the herd that currently produces the milk used to make cheese here in Canada.



Graph #2 Source: Statistics Canada

The Federal government has promised to help dairy producers who lose market share under CETA. Details of the assistance, including amount and duration – and whether such assistance will in fact be available -- are still unknown. While a compensation program would reduce the immediate financial impact on farmers, it will be an added cost to the public purse and will not result in the spin-off jobs from processing milk in Canada.

Under supply management, dairy producers earn their income from the market and do not require subsidies. Graph #2 shows that dairy producers consistently obtain a decent income from the marketplace, while for Canadian beef and hog producers, cost of production exceeds market revenues. With CETA, Canada will be helping the European dairy sector by giving them more of the market, particularly the high value market and offering Canadian dairy farmers a government cheque to cushion the loss of their market-based income.

The EU subsidizes its farmers

The EU spends over 50 billion euros ($70 billion Canadian) per year on agricultural subsidies via the Common Agricultural Policy. European farmers obtain approximately 30 to 50 percent of their incomes from direct per-acre annual subsidies, plus additional payments in case of market, price or environmental crises.[xvii]

In contrast, Canada provides no per-acre payments and only a limited safety net program. Under *Growing Forward 2* the new trigger point for safety net programs as well as the restricted range of costs eligible for coverage significantly reduce the amount of support available to Canadian farmers from 2013 onward.

Canadian dairy, egg, chicken and turkey farmers do not use the Business Risk Management safety net programs because the supply management system provides them an adequate income from selling their product. Canada's Agriculture Ministers have repeatedly stated that farmers should get their income from the marketplace, not the mailbox. It is unlikely that Canadian farmers will ever get European-style subsidies.

[i] Eberhardt, Pia, Blair Redlin and Cecile Toubeau. *Trading Away Democracy. How CETA's investor protection rules threaten the public good in Canada and the EU.* Published by Aitec et. al. November, 2014. p. 3.

[ii] Eberhardt et al.

[iii] Eberhardt et al., p. 5.

[iv] UPOV is the *Union Internationale pour la Protection des Obtentions Vegetale* or the *International Union for the Protection of New Varieties of Plants.*

[v] Hybrids are produced by crossing two inbred parent lines in a controlled fashion to produce an offspring generation with predictable and desirable traits from each parent. When seed from the hybrid crop is planted, the resulting next generation will have varying levels of the desired traits, thus farmers who use hybrid seed must buy new seed each year. Hybrid seed is used to produce most of the corn grown in Canada.

[vi] Putting the Cartel before the Horse ...and Farm, Seeds, Soil, Peasants, etc.: Who Will Control Agricultural Inputs, 2013? ETC Group, September 2013 http://www.etcgroup.org/sites/www.etcgroup.org/files/CartelBeforeHorse11Sep2013.pdf

[vii] International Convention for the Protection of New Varieties of Plants

[viii] CETA Section 22 Intellectual Property, Article 12 Plant Varieties, Consolidated CETA Text http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng

[ix] CETA Section 22, Intellectual Property, Article 18, Provisional and Precautionary Measures and Article 19, Other remedies. http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng

[x] The threshold for goods procurement by sub-national governments is 200,000 SDR. SDR is the acronym for "Special Drawing Rights" and is a mechanism set up by the International Monetary Fund to provide an internationally recognized standard of value. The SDR rate is derived from the values of the euro, Japanese yen, pound sterling, and U.S. dollar and is published daily on the IMF website. On Dec. 4, 2014 1 SDR = CDN $1.655360 http://www.imf.org/external/np/exr/facts/sdr.htm

[xi] CETA Section 21. Government Procurement, Chapter X, Government Procurement, Article II Scope and Coverage: "In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall: (a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including: (i) premiums, fees, commissions and interest; and(ii) where the procurement provides for the possibility of options, the total value of such options. http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/21.aspx?lang=eng

[xii] *EU-28 Import from Canada, European Commission,* Directorate General for Agriculture and Rural Development http://ec.europa.eu/agriculture/statistics/trade/2013/eur28ag/page_224.pdf

[xiii] *Pork - Market Report*, Government of Canada website. http://www.canadainternational.gc.ca/eu-ue/policies-politiques/reports_pork-porc_rapports.aspx?lang=eng

[xiv] European Commission, Third Country Establishments https://webgate.ec.europa.eu/sanco/traces/output/CA/RM_CA_en.pdf

[xv] Census of Agriculture, Table 004-0001,

[xvi] CANSIM Table 003-0007 - Supply and disposition of milk products in Canada, annual (tonnes), Statistics Canada

[xvii] *The common agricultural policy (CAP) and agriculture in Europe – Frequently asked questions,* European Commission, http://europa.eu/rapid/press-release_MEMO-13-631_en.htm