

CANADA ENTERS INTO FREE TRADE NEGOTIATIONS WITH THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

Posted on November 30, 2021

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On November 16, 2021, Canada announced that it will proceed with negotiations with the Association of Southeast Asian Nations (“**ASEAN**”) on a free trade agreement (“**FTA**”).^[1] This step follows public consultations in 2018 that indicated support from many stakeholders for such an agreement.^[2]

The negotiations reflect Canada’s commitment to diversifying and strengthening global supply chains to drive economic growth as recovery from the COVID-19 pandemic continues. Expanding Canada’s economic relations with the Indo-Pacific region would further diversify Canada’s trade and investment relationships, which historically have been heavily focused on the US and China.

An ASEAN FTA would complement Canada’s efforts to build a web of regional trade agreements that already include the Canada United States Mexico Trade Agreement (“**CUSMA**” – formerly NAFTA – see our bulletin series [here](#)), the Comprehensive Economic and Trade Agreement with the European Union (“**CETA**” – see our bulletin series [here](#)), and the *Comprehensive and Progressive Trans-Pacific Partnership* (“**CPTPP**” - see our bulletin series [here](#)). It would make Canada one of the most connected trade and investment countries in the world.^[3]

GDP and Population of Canada’s Regional Trading Partners^[4]

	Total GDP (US\$ trillions)^[5]	Total Population (millions)
CUSMA	23.7	496
CETA	16.9	486
CPTPP	10.7	511
Canada-ASEAN (proposed)	4.6	705

ASEAN member states collectively comprise one of the world’s fastest growing economic regions. In the aggregate, they would constitute Canada’s sixth largest trading partner and the world’s third most populous consumer market. In 2020, Canada-ASEAN merchandise trade exceeded US\$20 billion and services trade reached US\$4.5 billion.^[6]

Advantages for Canada of an FTA with ASEAN

The main advantage of a Canada-ASEAN FTA would be market access to countries that are not already CPTPP members. Most notably, an FTA would expand trading and investment potential with Indonesia (where bilateral FTA negotiations have recently also been commenced^[7]), the Philippines, and Thailand, all non-CPTPP member countries with which Canada already has significant trade without an FTA. These countries each present significant opportunities for Canada in a range of export-competitive sectors including agriculture (notably beef, pork, canola, and grains), manufacturing (e.g. automobile and aerospace), and services (particularly business, communications, and computer and information services). Overall, an ASEAN-Canada FTA Joint Feasibility Study estimates that an FTA will increase bilateral trade between ASEAN member states and Canada by US\$7.8 billion.^[8]

Additionally, a Canada-ASEAN FTA will provide Canadian exporters with a significant competitive advantage in the region relative to their US counterparts. The United States chose not to become a member of the CPTPP and does not have an FTA with any of the ASEAN countries. Canada learned the significance of bilateral trade “first mover” advantages when it lagged the US in completing an FTA with Korea, and is now capitalizing on the comparative advantages from its proactive strategies on CETA and the CPTPP.

A Canada-ASEAN FTA will also serve to even the playing field with Australia and New Zealand. These important sources of key agricultural and natural resource commodities already have a regional FTA in place which gives their exporters preferred access to ASEAN member countries.^[9]

A “CPTPP-light” Agreement?

A Canada-ASEAN FTA was originally envisioned as a ‘stepping stone’ to CPTPP accession for the ASEAN member countries not already a part of the CPTPP (Thailand, Indonesia, Cambodia, the Philippines, Myanmar, and Laos). However, this may prove difficult because of the ambitious scope achieved in the CPTPP, especially regarding the environment, labour, and intellectual property, among other areas, which may be challenging for some ASEAN nations to agree to and comply with. Perceived human rights violations in some of the non-CPTPP member countries were also noted by some stakeholders, including labour unions, as potential concerns during the Canadian Government’s consultation process.^[10]

As a result, we expect that any Canada-ASEAN agreement is likely to be more modest in scope than the CPTPP, and is unlikely to serve as a direct gateway to CPTPP accession for the remaining six ASEAN countries. However, it can be expected that Canada and the other ASEAN members of CPTPP (Singapore, Malaysia, Vietnam and Brunei) will be motivated to avoid overt conflicts or unnecessary inconsistencies between any new agreement and the CPTPP.

Priority and Contentious Areas

The relatively recent CPTPP negotiations shed light on some potential areas of contention and on member priorities. If the Canada-Indonesia bilateral FTA negotiations proceed expeditiously, they may also generate focal points for progress in the broader Canada-ASEAN negotiations.

Canada made efforts during the CPTPP negotiations to secure a number of bilateral side instruments. These included commitments with other CPTPP countries on automobiles, labour standards, and culture, among others.^[11] Canada will likely seek similar labour standards and culture provisions in its ASEAN FTA negotiations, reflecting the current Canadian Government's progressive trade agenda.

Agriculture and agri-food will likely be a key priority area for Canada, as it was in CPTPP. While Canada has significant potential opportunities to increase exports of some agricultural and agri-food products (e.g. beef, canola, pork, grain, and various processed foods), pressure for increased access to the Canadian market by FTA counterparties will likely remain contentious. Supply-managed industries including dairy, poultry, and eggs, as well as sugar^[12] and some other sectors are likely to face strong pressures for access to the Canadian market by ASEAN exporters.

Investor-state dispute settlement ("ISDS") has been complex and controversial in Canada's CETA and CUSMA negotiations, and may prove to be challenging in an ASEAN FTA as well. CPTPP contains a modern and robust ISDS regime, but various side letters excluded certain countries from the application of these provisions. Given the new Canadian Foreign Investment Promotion and Protection Agreement Model released earlier this year,^[13] Canada may advocate for ISDS provisions within the FTA, likely in a manner that supports the promotion of progressive trade (including through sustainable development, corporate social responsibility, and human rights) in addition to protecting the interests of Canadian enterprises with investments in the region. While this form of ISDS may be attractive to Canadian stakeholders, it is not yet clear how ASEAN member countries will react.

Concluding Observations

A Canada-ASEAN FTA has the potential to significantly expand two-way trade and investment flows between Canada and ASEAN countries. However, with the CPTPP already in place for Canada and four of the ASEAN members, the incremental utility of a Canada-ASEAN FTA may be scrutinized more vigorously as each of the countries considers the benefits and concessions it would be prepared to make.

McMillan's International Trade Practice Group has significant experience with international trade regimes and would be pleased to assist you in assessing impacts, protecting interests and pursuing benefits of a Canada-ASEAN Free Trade Agreement.

[1] Global Affairs Canada, News Release, “[Canada and ASEAN proceed with free trade agreement negotiations](#)” (16 November 2021).

[2] Global Affairs Canada, “[Public Consultations on a possible Canada-ASEAN FTA](#)” (2018).

[3] Canada also has several significant bilateral trade agreements, including with Korea, and is commencing negotiations with the United Kingdom after its withdrawal from the EU and CETA.

[4] Based on current World Bank data, see [The World Bank, GDP \(current US\\$\); The World Bank, Population \(total\)](#). Values include Canada (US\$1.6 trillion in GDP and 38 million population). Other overlaps in these agreements are Mexico (US\$1.1 trillion GDP and 129 million population) in both CUSMA and CPTPP; and Vietnam, Singapore, Malaysia, and Brunei (collectively US\$1.0 trillion GDP and 136 million population) in both CPTPP and Canada-ASEAN FTA.

[5] Approximate values in Canadian dollars - CUSMA GDP C\$30.3 trillion; CETA GDP C\$21.7 trillion; CPTPP GDP C\$13.6 trillion; ASEAN (proposed) GDP C\$5.9 trillion (@1.28 exchange rate).

[6] Global Affairs Canada, *supra* note 1; approximately C\$26 billion and C\$5.8 billion @1.28 exchange rate.

[7] In June 2021, Canada announced that it will proceed with negotiations with Indonesia on a Comprehensive Economic Partnership Agreement. This indicates that the potential trade and investment opportunities with Indonesia are seen to be particularly significant. See Global Affairs Canada, News Release, “[Canada to begin negotiations with Indonesia on a Comprehensive Economic Partnership Agreement](#)” (20 June 2021).

[8] Approximately C\$9.8 billion; Global Affairs Canada, “[Joint feasibility study on a potential Canada-ASEAN Free Trade Agreement](#)”.

[9] See Australian Government, Department of Foreign Affairs and Trade, “[ASEAN-Australia-New Zealand FTA](#)”.

[10] Global Affairs Canada, *supra* note 2.

[11] In total, Canada entered into approximately 40 bilateral side letters during the CPTPP. These include agreements relating to culture, beef, automobiles, geographical indications, e-commerce, and labour, among others. The full list is available [here](#).

[12] In particular, stakeholders in sugar refining and extraction expressed a concern with the increased competition that may result from an ASEAN FTA, especially from producers in Thailand. See Global Affairs Canada, *supra* note 2.

[13] Government of Canada, “[Canada's 2021 Foreign Investment Promotion and Protection Agreement \(FIPA\) Model](#)” (2021).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

The logo for mcmillan, featuring the word in a lowercase, sans-serif font. The 'm' and 'c' are in a dark red color, while the 'm', 'i', 'l', 'l', 'a', and 'n' are in a light blue color. The logo is positioned in the upper left corner of a banner image that shows a low-angle view of a modern glass skyscraper against a clear sky.

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