



The EU-Canadian Trade Agreement CETA's Impact on French Immigration

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Overview: CETA creates several new categories of temporary workers who are allowed to enter the EU market via service contracts between Canadian and European corporations. These temporary workers must remain on their Canadian payroll, and are limited in the duration of their stay in the EU.

At present, CETA changes very little for a Canadian businessperson hoping to work in France. Although CETA has provisionally entered into effect, France has yet to act on the newly-created categories of temporary workers who are entitled to visa to work in France.

Context

The recently-concluded Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union entered into effect in an age when the public is increasingly distrustful of international free trade agreements. At its core, CETA is about trade liberalization as a means to boost the economy and decrease tariffs between Canada and the EU. It allows duty free entry in Canada of 98% of EU export goodsⁱ. It also increases the protection of exported products bearing geographical indications (prohibiting the sale of imitation “Comté” or “Beaufort” cheeses sold in Canada, for example)ⁱⁱ and assures the mutual recognition of certain trades such as architects, accountants and engineersⁱⁱⁱ. It simultaneously increases the amount of permitted imports and exports between Canada and EU all while saving over half a billion Euros in taxes via reduced tariffs each year.^{iv} Beyond just trade, CETA also permits the introduction of new classes of temporary workers between Canada and the EU.

Impact on EU Immigration

CETA mandates that Canada and the EU must mutually “allow temporary entry to natural persons for business purposes,”^v meaning that the EU and Canada have bound themselves to permit temporary entry for Canadian nationals and EU nationals that qualify for the below-listed categories of temporary workers on business purposes. Under CETA, neither Canada nor the EU can impose a maximum quota for these categories of temporary workers. CETA lists four categories of temporary workers who are granted the right to reside in

Europe from a period of six months up to three years, depending on the category. These four categories are: key personnel, contractual services suppliers, independent professionals and short-term business visitors.^{vi}

Summary of New Categories

1. Key Personnel
 - a. Business visitors for investment purposes
 - b. Investors
 - c. Intra-corporate Transfer
 - i. Senior Personnel
 - ii. Specialists
 - iii. Graduate trainees
2. Contractual Service Provider
3. Independent Professional
4. Short-term Business Visitors

Although CETA brings new temporary visas to all EU member states, France already has in place numerous legal statuses that correspond to the CETA categories. These existing French statuses differ slightly from the proposed CETA categories, and will co-exist alongside one another.

The following table lists the new categories, explains what they entail, contrasts them with existing French legal statuses, and then indicates which status is more favorable:

<u>CETA Category</u>	<u>Explanation of CETA category</u>	<u>Analogous French legal statuses, and requirements</u>	<u>Better off under the analogous French legal status?</u>
Key Personnel	“Key Personnel” is a term of art that contains three sub-categories: business visitors for investment purposes, investors, and intra-corporate transferees.	See below for the different categories of Key Personnel.	See below.
Business visitors for investment purposes	‘Business visitors for investment purposes’ are individuals who assist in the creation of a corporation but do not directly transact with customers, and are salaried employees of a Canadian corporation. They are permitted to stay for up to 90 days within a six-month period.	There are two analogous statuses. The first is the Schengen Visa. The existing status (which is EU-wide) allows 90 days presence within 180 days. As a business visitor with a Schengen visa, the "work" allowed is strictly limited to participating in information meetings, conferences, seminars, negotiations, visiting sites or exploring business opportunities. Alternatively, if the individual comes from one of the 43 countries exempt from having to solicit a Schengen Visa before entering the Schengen Area, he/she may also come to the Schengen Area as a business visitor. He/she is subject to the same conditions as business visitors who possess Schengen visas. There is no work permit required for their stay in France. They are limited to 90 days within a six-month period. This status cannot be renewed.	There is no difference. Both statuses do not permit the individual to perform “productive” work and are limited to 90 days presence within a 180-day period.

Investors	Investors are those who, in an executive role, establish, develop, or administer the operation of an investment of a substantial amount of capital. These investors are not required to apply for a work permit before entering France. Investors are limited to a maximum one-year stay.	The analogy is "Talent Passport" for Economic investors, found in the French immigration code CESEDA L. 313-20 7°. The investor must show a project of direct economic investment in France. He/she must hold at least 30% of the capital of the project, and the investment must be at least 300 000€. The possessor is entitled to 4 years initial residence in France, with the possibility of unlimited renewals.	There are advantages and disadvantages. The French "Talent Passport" is valid for 4 years as opposed to 1 year, and can be renewed. It has, however, more strenuous demands. Thus, if a Canadian investor did not hold at least 30% of the capital of the project, and the investment was at least 300 000€, then the Canadian investor may wish to choose the CETA route.
Intra-corporate Transfer ("ICT")	Intra-corporate Transfer ("ICT"). These are employees who are transferred from a Canadian corporation to a French corporate affiliate (be it a subsidiary, branch, or head company), all while remaining on their Canadian payroll. To qualify, the employee must have at least one year of seniority with the Canadian corporation. CETA details the following three sub-categories of ICT transfers.	This exists as the multi-annual "ICT Secondee" residence permit. CESEDA L. 313-24 1° and 2°. The foreign national comes to France for the purpose of holding a senior management position or to provide expertise without a contract of employment with the host entity in France. He/she must have 3 months of continuous seniority within the corporation, must be for an expert or a senior manager, and must remain on the foreign payroll. The assignment can be up to three years, and is generally non-renewable. It can be prolonged on an exceptional basis to finish a mission.	There is not a status that is clearly preferable. The CETA category can be extended beyond 3 years for a total 4 and a half years, whereas the existing French status can only exceptionally be extended. The French status requires less seniority,
Senior Personnel	"Senior personnel" make executive decisions. Senior personnel are allowed to stay for up to three years, or the length of the contract, whichever is shorter. This may be prolonged up to 18 months subject to the approval of French immigration authorities, for a total of four and a half years temporary stay.	CESEDA L. 313-24-I. See above.	See above.
Specialists	"Specialists" have "uncommon knowledge" of the corporation's products or services. Specialists are allowed to stay for up to three years, or the length of the contract, whichever is shorter. This may be prolonged up to 18 months.	CESEDA L. 313-24-I. See above.	See above.
Graduate trainees	"Graduate trainees" under ICT have a university degree and are temporarily transferred to the French corporation for career development purposes. Graduate trainees are limited to a maximum one-year stay.	The "ICT trainee". CESEDA L.313-7-2. The trainee undertakes an internship within the framework of a training agreement between a non-French corporation and a French corporation. This is valid for up to one year, non-renewable.	There is no difference.

Contractual Service Provider	“Contractual Service Provider” is an employee of the Canadian corporation, performing a service in France for a French corporation. To qualify, the candidate must have at least one year of seniority within the Canadian corporation, three years of professional experience in the sector, and a relevant university degree and requisite professional qualifications if required for that sector. Contractual service providers are limited to a one-year stay.	International Service Provider. CESEDA 311-3 8°. The Third-Country Nationals may be assigned by their foreign employer to work at the site of a French company in the framework of an international service contract. This is valid for up to one year, renewable.	The existing French category is preferable, because it is less demanding in terms of seniority and it is renewable.
Independent Professional	“Independent Professional” is a self-employed individual who provides services to a Canadian corporation, who due to a contract between the Canadian corporation and a French corporation, must be in France to provide a service to a client of a French corporation. This is the same case as a “Contractual Service Provider” as stated above, except that instead of being directly employed by the Canadian corporation, an independent professional has contracted his/her labor to the Canadian corporation. To qualify, the candidate must have six years professional experience and a university degree (or a qualification demonstrating the equivalent). Independent professionals are limited to a one-year stay.	There is not an existing French legal status that corresponds to new category. The closest is a temporary residence permit for entrepreneurs/ professionals, although these individuals must establish their corporation in France. CESEDA L. 313-10 3°. This permits a one-year temporary residence permit, renewable.	As nothing in French immigration code corresponds to this category, it is preferable for Canadian contractor independent professionals to apply through CETA.
Short-term Business Visitors	“Short-term business visitors” are able to visit France for various activities, including meetings and consultations, research, seminars, exhibitions and training. Short-term business visitors are not allowed to sell products directly to the public in France, and cannot receive remuneration from a French corporation.	This status exists as the status stated above under "business visitors for investment purposes". See above. They are limited to 90 days within a six-month period. This status cannot be renewed.	There is no difference. Both statuses do not permit the individual to perform “productive” work and are limited to 90 days presence within a 180-day period.

Limitations

CETA does not concern individuals who are “seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence, or employment on a permanent basis.”^{vii} This means that CETA only creates temporary employment opportunities in which the employee sent into France remains in the payrolls of a Canadian corporation. CETA has no impact on local hires, and cannot lead to permanent residency or eventual naturalization in the host country. As such, CETA does not interfere with the sovereign right of European nations to determine their own long-term immigration policies. Lastly, under CETA, French labour

law, social security, minimum wages and collective “Convention Collective Nationale” agreements are all still in place and apply to CETA temporary workers.^{viii}

Provisional Nature of Agreement

CETA is a multilateral trade agreement. In terms of EU law, in order for any EU trade agreement to enter fully into effect, it must be ratified by EU member states. Pending such ratification, CETA entered provisionally into effect on September 21, 2017.^{ix} A full ratification by all EU member states may take years. However, as Commissioner for Trade Cecilia Malmström stated, “The provisional entry into force allows EU companies and citizens to start reaping the benefits of this agreement right away.”^x

All of CETA is now in effect with the exceptions of investment protection, investment market access for portfolio investment, and the Investment Court System.^{xi} Once all EU states have ratified the agreement, CETA will enter definitively into force.

Conclusion

CETA requires that within six month of entering into force, Canada and the EU must independently implement these new CETA temporary worker categories. However, the agreement being only “provisionally” in effect, there is uncertainty as to when the agreement will enter into force and the EU member states be under an obligation to adapt their internal laws to provide for the immigration statuses created under the CETA. As of yet the French government has not announced any planned modification to its immigration code, CESEDA, in order to take into account the terms of CETA.

For further information, please consult the CETA agreement, available at:

<http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/10.aspx?lang=eng>

ⁱ *CETA: Europe's Next Trade Step*, Commissioner for Trade Cecilia Malmström, Speech delivered to European Parliament at Brussels on 9 December 2015, available at: http://trade.ec.europa.eu/doclib/docs/2015/december/tradoc_154022.pdf.

ⁱⁱ *CETA Exporter Stories*, European Commission, available at:

http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156066.pdf.

ⁱⁱⁱ *Guide to the Comprehensive Economic and Trade Agreement (CETA)*, European Commission, July 2017, available at:

http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156062.pdf.

^{iv} *CETA: Tariffs plummet to zero today as Canada-European Union deal gets under way*, Global Affairs Canada, September 21, 2017, available at: https://www.canada.ca/en/global-affairs/news/2017/09/ceta_tariffs_plummettozerotodayascanada-europeanuniondealgetsund.html?wbdisable=true.

^v *CETA*, Article 10.3. Available at: <http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/10.aspx?lang=eng>.

^{vi} *Id.*, Article 10.

^{vii} *Id.*, Article 10.2.2.

^{viii} *Id.*, Article 10.2.5.

^{ix} *Id.*

^x *EU-Canada trade agreement enters into force*, European Commission, September 20 2017, available at:

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1723>.

^{xi} *CETA Explained*, European Commission, September 21, 2017, available at: http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-explained/index_en.htm#provisional-application.