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mcmillan international trade bulletin

the deal is done: Canada – EU trade deal signed

After more than four years of negotiation, Canada and the EU have concluded the Comprehensive Economic Trade Agreement ("CETA"), with the political declaration in principle signed by Prime Minister Stephen Harper and European Commission President José Manuel Barroso in Brussels on October 18, 2013.This agreement will significantly liberalize trade between the parties. Tariffs will be reduced to zero on 98% of goods currently traded between Canada and the EU (99% for industrial goods). Most remaining tariffs will be phased out in stages after 3, 5 and 7 years, depending on the product.

CETA will not go into effect immediately. It must first be translated into all 23 treaty languages of the EU, a process that is expected to take between 18 months and 2 years. Even the first public draft of the agreement is not expected for a few months, as legal terms need to be finalized. We do, however, know much about the scope of CETA.

Most issues had been addressed by the end of November 2011, as negotiators had dealt with the 'low hanging fruit". At that time, there was agreement to reduce most tariffs. In addition, the institutional arrangements for administration of CETA had been substantially agreed.

Since November of 2011 there has been hard slogging as both sides fought hard on the more politically sensitive issues. The resolution of these issues is discussed below.

agriculture

Perhaps the most sensitive issue for negotiators was agriculture, though there was little concern for agricultural support programs generally. The battle was fought over requests for increased access of specific products. Canada wanted increased access to the EU market for beef and pork. The EU sought unlimited access to the Canadian cheese market. This was a "deal breaker" for both sides, and was resolved through last minute quota concessions. While quota may not be a preferred approach in free trade negotiations, it would seem that this was the only way to permit the extensive trade liberalization that was already otherwise agreed.

Canada received a significant increase in quota for hormone free beef and pork exports to the EU, with planned tariff free access for 65 thousand tonnes of beef and 80 thousand tonnes of pork. Bison shipments will no longer be subject to beef restrictions, but will have separate quota of 3 thousand tonnes. The value of these concessions has been reported to be in the range of $1 billion to $1.3 billion per year. In return, the EU will more than double its cheese import quota for sales to Canada from about 13 thousand tonnes per year under existing arrangements, to a reported 29 thousand tonnes. While the numbers seem big, it should be understood that the Canadian cheese market is estimated to be in the range of 500 thousand tonnes per year. As a result, the concessions mean the total annual import share of the market will increase from about 4% to 8% of annual Canadian consumption (including imports from all sources).

automotive

The automotive market was another sensitive issue. The EU view was that automobiles made in Canada did not meet EU rules of origin to be considered a Canadian product eligible for tariff removal. Integration of automotive production in North America has meant that a Canadian made car may also include parts and steel from both Mexico and the United States (as their products contain Canadian inputs). The use of these other NAFTA-sourced inputs by Canadian producers exceeds levels permitted by EU rules of origin, and was a major stumbling block to expanding Canadian sales opportunities in Europe. Canada ultimately received a "waiver" of EU rules of origin for up to 100 thousand automobiles per year – a substantial increase from the approximately 8,000 autos currently shipped. Canada will also have unlimited access for Canadian-built autos that can meet the content rules of the EU. The agreement also contemplates that any change in EU rules that might be accorded in other trade treaties will also apply to Canada. This may be of particular significance in the context of the results of trade negotiations between the EU and the United States.

pharmaceuticals

Intellectual property rights for pharmaceutical production was another difficult issue. The EU had sought an extension of patent protection for 5 more years, to match the length of EU rights. The EU also sought to have time in product approval not counted against the length of the patent. Canada ultimately agreed to granting additional pharmaceutical patent protection for up to 2 years to account for the approval process.

trade in services

On trade in services, Canada was seeking temporary access to the EU market for a range of Canadian workers (similar to NAFTA). The EU balked at this request on the ground that individual member states of the EU maintain sovereignty over immigration from non-EU sources. Canada was successful, however, in negotiating preferential access for a number of employment categories, including: information technology workers, professionals (e.g. accountants, engineers), investors, environmental services, scientific/technical personnel, and workers in the energy distribution sector. Preferential treatment will be reciprocal.

government procurement

Government procurement concessions have extended far beyond those in NAFTA. EU companies will be able to bid on Federal Government contracts; however, since the Provinces have also agreed to attorn to the terms of the agreement, access will be extended to both provincial and municipal government contracts. Canadian companies will have reciprocal rights to bid on contracts tendered by all EU institutions, as well as with all 28 member countries and their regional and local governments.

rules of origin

Rules of origin proved to be a thorny issue for Canadian negotiators. For certain products, tariff concessions conferred no benefits where non-Canadian inputs were employed, even if those inputs represented only a small portion of the value of the goods. Some examples included American fish processed in Canada, and textiles made from imported thread. This issue was resolved through a process known by the acronym, TPL (trade preference level), that will allow derogation from normal EU rules of origin, though phase in of these rights may occur over 3, 5 or 7 years.

investment

The EU had pressed hard on a number of investment issues. Negotiators had requested unrestricted access to Canadian banking, and a removal of any review of EU takeovers under the *Investment Canada Act*. EU banks will be able to do business in Canada as before, including being deposit-taking institutions, but Canadian ownership limits for Class A banks will remain, preserving Canada's current chartered banking system. On monetary limits for *Investment Canada Act* review, the EU will obtain a level higher than currently applied under NAFTA; it should be noted that this new level will ultimately have to apply to the United States and Mexico as well, under the terms of NAFTA.

Both sides did agree on a process to protect investments of the other party. While the parties were substantially in agreement, the negotiations were protracted as there was a mutual aim of devising a system that would constitute a "gold standard" as a precedent for future trade treaties.

geographical indications

Geographical indications ("GI") arise where products from a specific place or region are accorded certain intellectual property protection. The EU began negotiations with an extensive list of hundreds of product names that it wished to see protected. Many of these are considered generic product names in Canada. In addition, some of the requested designations had existing Canadian trademarks. Since taking away these rights would likely be considered an expropriation of an asset under NAFTA, there was a concern that yielding on this issue would give rise to NAFTA Chapter 11 proceedings by Mexican or American investors in Canadian enterprises holding these trademarks. Ultimately the EU agreed on a very limited list of particular political sensitivity. The GIs recognized are primarily related to meats and cheese, and include: Grana Padano, Roquefort, Elia Kalamatas Olives, Aceto balsamico di Modena, Prosciutto di Parma and Prosciutto di San Daniele.

conclusion

The Canada – EU negotiations were very complex. Each party had extensive consultation with both industry and political interests. Canada had representatives from all provinces in its delegation, and the EU shared its progress with all member nations. There were some contentious points of particular political sensitivity where the outcome may not have satisfied all stakeholders, but Canada and the EU understood that the substantial agreement reached on most issues could not be summarily discarded, and certain accommodations were required. The result is an important treaty that extends to 5 countries in the G8 and beyond. If the experience of the Canada-

US Free Trade Agreement and NAFTA is any guide, we may expect a significant increase in Canada – EU trade in the coming years.

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