



CANADA-EU: FREE TRADE MUST BE SECURE TRADE

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After many years of negotiations, it was announced that the final text of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) had been completed and was headed for translation into the 23 official languages.

The full document was finally made available to the public on September 26th 2014, in the context of the Canada-EU Summit in Ottawa. While many have already speculated on the impact that this historical treaty will have, the agreement will still first need to be ratified by member states, which isn't likely to happen before the end of 2015-2016.

Nevertheless, now is as good a time as ever to take a step back and reflect on the impact that CETA will surely have on the current trading landscape, especially in light of the many technical and regulatory hurdles that Canadian manufacturers have to meet in order to be able to sell their wares and services to the EU.

Anyone who manufactures, distributes, imports or exports products for sale internationally knows the headaches that can be caused by non-harmonized regulations and differing industry standards. Product classification, safety requirements, labelling, certification, marketing and environmental considerations haunt even the most intrepid entrepreneur, who is signing distribution deals for new products faster than they can be certified for compliance. Of course, both the industry and the public recognize the importance of having to pass through these regulatory hula hoops and it is precisely this, amongst many other concerns, that CETA has set itself out to streamline and address in the context of free trade between Canada and the European Union.

CETA in a Nutshell

Briefly, CETA is the product of bilateral negotiations between the European Union and Canada that began in 2009. CETA is being touted as a broader, more ambitious initiative than NAFTA, and the hope is that CETA will open new markets for the

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exportation of Canadian products and services into the EU; thereby creating new trade opportunities for Canadian distributors, manufacturers and service providers.

One of the guiding principles behind CETA is the granting of preferential access to Canadian products and services by eliminating previously applicable tariffs. At its core, CETA is expected to remove approximately 99% of the tariffs presently in place between the two economies, normally applied to a wide variety of products and services, such as non-agricultural goods (industrial and manufactured goods), as well as fish and seafood, forestry products, biotechnology and medical products.

This reduction and/or elimination of tariffs are seen as one of the driving forces that will hopefully increase trade. However, tariffs aren't the only barrier affecting the free flow of goods or services across borders: as previously stated, technical barriers such as regulatory compliance, certification tests and various safety standards also create resistance to a free flowing market, which are also addressed by CETA.

CE Marking, CETA and Regulatory Cooperation

As an example of the many regulatory requirements applicable to any given product or service distributed or provided in the EU, CE marking is required in order to show a product's compliance with a grouping of EU directives. The recognizable CE mark allows for the circulation of products marked "CE" throughout the European market. More specifically, a CE mark signals that a product bearing the mark can be sold in any member state of the European Economic Area and signifies that the manufacturer of the product has verified and confirmed that the product in question complies with the requirements set out by the applicable directives relating to that specific class of product. Where a directive requires it, the product may also need to be assessed by a third party regulatory body to establish such conformity. For example, let's say a manufacturer who makes a popular toy already being sold in Asia wishes to now sell and distribute this product in a few European states. To be able to do so, it would first have to verify with the relevant authorities if any specific CE directives exist for this class of product. If it so happens that there is a directive that is specifically applicable to toy safety, this manufacturer will have to first meet these requirements to be able to affix the CE mark on its product and distribute it to the European member states.

This responsibility naturally vests with the manufacturer/provider, and a CE mark acts as a signal that all legal requirements necessary to be complied with have been met.

However, this, as well as other regulatory considerations, has been a source of confusion; and obtaining a CE mark, or any other required form of regulatory certification, has been known to cause delays and unforeseen expenses for anyone looking to enter the EU market from abroad.

Therefore, in order to further encourage trade and to truly benefit from the “0%” tariff, the consolidated CETA text includes a “regulatory cooperation chapter”, a first of its kind for any “Canadian Free Trade” type treaty, which was put in place mainly to address the regulatory concerns that can follow an increase in trade.

The regulatory cooperation chapter of CETA is intended to create a framework under which cooperation between Canadian and EU regulatory authorities would be facilitated via the comparison of data, analysis of practices, risk assessments, as well as via the evaluation of overall regulatory impact. While this is not a push for “regulatory harmonization” per se, such regulatory cooperation is nevertheless expected to diminish trade barriers and facilitate earlier and cheaper access to regulatory development processes and compliance assessments. This is not being “sold” as a guarantee of equivalent regulatory standards between both markets, but implies that a mechanism will be in place to allow better guidance and better communication between the governing regulatory bodies that establish and validate these requirements.

To this effect, here are a few notable excerpts from the consolidated CETA Text, Section 26 on Regulatory Cooperation:

Article X.2.4: Principles

4. [...], the Parties commit themselves to further developing their regulatory cooperation in light of their mutual interest in order to: (a) prevent and eliminate unnecessary barriers to trade and investment; (b) enhance the climate for competitiveness and innovation, including through pursuing regulatory compatibility, recognition of equivalence, and convergence; and (c) promote transparent, efficient and effective regulatory processes that better support public policy objectives and fulfil the mandates of regulatory bodies, including through the promotion of information exchange and enhanced use of best practices.

Article X.5: Compatibility of Regulations

With a view to enhancing convergence and compatibility between regulatory measures of the Parties, each Party shall, when appropriate, consider the regulatory measures or initiatives of the other Party on the same or related topics. This consideration does not prevent either Party from adopting differing measures or pursuing differing approaches for reasons including different institutional and legislative approaches, or circumstances, values or priorities particular to that Party.”

With regards to the assessment of standards, CETA also seeks to establish a protocol that will allow for the reciprocal acceptance of test results and product certification assessments by the respective recognized regulatory bodies in Canada and the EU. Also, in order to facilitate the assessment and certification of a product, a

Canadian certification body could be enabled to seek accreditation from a body located entirely within the EU. If such accreditation is obtained, testing and certification could therefore be recognized as part of one mutual accreditation for both regions but occurring in only one, thereby reducing certification costs and avoiding unnecessary regulatory delays (one can hope).

As such, here are additional notable general excerpts from the consolidated CETA Text, section 6, (Chapter XX: Technical Barriers To Trade):

Article 3: Co-operation

The Parties shall strengthen their co-operation in the areas of technical regulations, standards, metrology, conformity assessment procedures, market surveillance or monitoring and enforcement activities in order to facilitate the conduct of trade between the Parties, as laid down in Chapter XXX (Regulatory Co-operation). This may include promoting and encouraging co-operation between their respective public or private organizations responsible for metrology, standardization, testing, certification and accreditation, market surveillance or monitoring and enforcement activities; and in particular, encouraging their accreditation and conformity assessment bodies to participate in co-operation arrangements that promote the acceptance of conformity assessment results.

Article 7: Marking and Labelling

[...] with respect to technical regulations relating to labelling or marking requirements, the Parties shall ensure they are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, such labelling or marking requirements shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks that non-fulfillment would create.”

It must be mentioned however that the scope and effect of this undertaking to cooperate remains to be seen and will most likely vary from sector to sector. CETA's approach with regards to cooperation in regulatory matters is nevertheless being marketed as creating fewer barriers to trade, once regulations are finally put in place. CETA also provides for specific “sectoral” cooperation regarding the safety of consumer goods.

In conclusion, it is difficult to evaluate all the changes that CETA will have on the present Canada-EU trading environment. It goes without saying however that for those who are already exporting products and services to the EU from Canada, or are evaluating the opportunity to do so, it is advisable to keep an eye out for further updates regarding CETA, and to consult a legal professional to not get caught in this new regulatory web.



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