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Canadian customs and global trade alert

The Canada-EU Comprehensive Economic and Free Trade Agreement (CETA) is coming: are you ready?

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Introduction

On Sunday, October 30, 2016, after seven years of tough negotiations, Canadian Prime Minister Justin Trudeau and European Union (EU) representatives signed an economic and free trade agreement known as CETA. Prime Minister Trudeau, European Council President Donald Tusk and European Commission President Jean-Claude Junker referred to the landmark deal as "…the most comprehensive, ambitious and progressive trade agreement ever negotiated either by Canada or the European Union." CETA is expected to have a significant impact on trade and investment in Canada and the EU.

What is CETA?

CETA is similar to the Trans-Pacific Partnership insofar as it deals with traditional and contemporary issues of trade and investment. CETA addresses traditional issues such as rules of origin, tariff reductions and investment rules (covered in the North American Free Trade Agreement). In addition, CETA deals with contemporary issues such as trade facilitation, the environment, and measures to help small and medium-sized enterprises (SMEs).

How will CETA affect trade and investment?

CETA is anticipated to boost two-way trade and investment between Canada and the EU, affecting virtually all industrial sectors. It will integrate Canada's economy of approximately 35 million people with the EU's economy of approximately 500

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million. As the EU is Canada's second-largest trade partner and the world's largest single market, accounting for 16 percent of world imports and exports, Canada is anticipated to benefit significantly from CETA. For example, at present only 25 percent of EU tariff lines on Canadian goods are duty free. Upon CETA's entry into force, the EU will remove tariffs on 98 percent of its tariff lines. Once CETA is fully implemented, the EU will eliminate tariffs on 99 percent of its tariff lines. Similarly, Canada will implement tariff reductions for CETA-originating goods.

When will CETA be in force?

Prime Minister Trudeau has expressed hope that 98 percent of CETA will come into force by way of "provisional application" in early 2017. Provisional application refers to the CETA approval by the Canadian and EU parliaments (but not Europe's 28 states and various regional parliaments). On October 31, 2016, the Canadian Minister of International Trade, Chrystia Freeland tabled CETA and introduced CETA implementation legislation in the Parliament of Canada. As a result, importers and exporters should plan now to take advantage of the opportunities presented by CETA.

Using CETA

To prepare for the provisional application of CETA, manufacturers, shippers, freight-forwarders, suppliers, wholesalers, distributors, retailers, importers, exporters and others should consider the following:

1. CETA provides opportunities for manufacturers and consumers to obtain goods at a lower cost by claiming CETA preferential tariff treatment.

2. In order to claim CETA preferential tariff treatment, importers and exporters will be required to establish that goods originate within a CETA territory.

3. Persons seeking CETA preferential tariff treatment under CETA should familiarize themselves with the Product-Specific Rules of Origin (Annex 1 – CETA) in order to determine whether or not goods are CETA-eligible.

4. Manufacturers, suppliers and others should evaluate their supply chains to determine whether or not potential duty savings under CETA warrant re-engineering their supply chain (i.e., finding sources of CETA-originating goods or methods of manufacturing CETA-originating goods).

5. Businesses may benefit by the identification of market access opportunities. EU exporters may find new opportunities for the sale of goods in Canada and vice versa. For example, Canadian pork and beef exporters stand to gain increased market access to the EU under CETA.

6. Businesses importing and exporting goods and services should re-examine the competitive landscape. New competitors may disrupt the market in Canada and the EU. For example, the Canadian cheese industry has indicated that it will have increased competition from European imports.

7. Industries such as the auto sector may obtain increased market access and may experience increased competition. Reduced tariffs under CETA will help European auto manufacturers sell their vehicles for less in

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Canada. Similar market access to Europe will be provided to Canadian auto manufacturers.

Trade facilitation and non-tariff trade barriers

Through CETA, trade facilitation will be improved through the reduction of border processing times. In addition, CETA addresses non-tariff trade barriers such as conformity assessments (e.g. testing and certification).

Trade in services

Canadian and EU service providers will have greater market access within the CETA territory. Management, financial, and information and communications technology services are among the EU's top services imports. They are also some of Canada's top services exports to the EU. Important aspects of CETA include provisions dealing with increased labour mobility, the reciprocal recognition of professional qualifications, and access to government procurement opportunities.

Investor court system

CETA also contains investor protection and Investor Court System (ICS) provisions. For example, under the CETA national treatment provision, governments must provide the same protection to foreign investors as they do for their own nationals.

In early 2016, after legal scrubbing, Canada and the EU revised CETA changing from an Investor State Dispute System to an ICS. It appears that this was done at the insistence of the EU in an effort to strengthen the agreement. However, the change was not universally accepted and the whole area of investor protections and the ICS has been subject to controversy. As a result, the European Commission and member states agreed that the ICS provisions will not be applied unless and until they are approved by all member states and parliaments. Ratification of the aspects of CETA that are not provisionally applied will likely involve a byzantine and arcane process. Adding to the uncertainty surrounding the ICS provisions is the fact they are the subject of court proceedings.

Summary

In summary, with the signing of CETA, Canada and the EU are expected to experience a boost in two-way trade and investment. By early 2017, approximately 98 percent of CETA could come into force by provisional application. Once CETA is fully implemented, the EU will eliminate tariffs on 99 percent of its tariff lines. Canada will implement similar tariff reductions for CETA-originating goods.

How we can help

Our Global Trade and Customs Group at Deloitte and Deloitte Tax Law are well-positioned to help you to identify opportunities with CETA. Our group is comprised of lawyers, accountants, customs brokers, former government auditors and industry specialists. We can help your business by managing compliance and by minimizing duties, taxes, and assessments.

Examples of where we can assist include:

1. Assisting with duty and import tax minimization strategies.

2. Identifying specific rules of origin which will render goods eligible for preferential tariff treatment under CETA.

3. Preparing for customs origin verifications and investigations.

4. Providing global supply chain assessments and strategies relevant to the optimization of the supply chain under CETA (e.g., sourcing inputs for the manufacturing of goods to ensure that they qualify for CETA preferential tariff treatment).

5. Giving advice with respect to duty deferral programs, drawbacks, refunds, in bond shipments and the use of foreign trade zones.

6. Advising non-resident importers.

7. Identifying opportunities for Canadian affiliates of US parent companies who wish to use Canada as a base for market access.

We would be more than happy to discuss how we can put our skills to work for you.

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