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Canada–European Union Trade Negotiations
8. Intellectual Property Protection

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Canada–European Union Trade Negotiations: 8. Intellectual Property Protection

(In Brief)

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CONTENTS

1 INTRODUCTION 1

2 NEGOTIATION ISSUES 1

CANADA–EUROPEAN UNION TRADE NEGOTIATIONS: 8. INTELLECTUAL PROPERTY PROTECTION

1 INTRODUCTION

While negotiations for a Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU) cover more than 20 subject areas, there are nine of particular interest to Canadians and their EU counterparts. These nine topics are the most sensitive or difficult negotiating issues, or the source of the greatest estimated impacts should CETA negotiations succeed, or the areas of the more controversial elements. This paper discusses intellectual property (IP) protection.[1]

2 NEGOTIATION ISSUES

A chapter on IP in the CETA could contain some of the more controversial elements of any agreement between Canada and the EU. In late 2009, the Trade Justice Network, a Canadian civil society organization, leaked a draft text of the chapter, which indicated that the EU's opening position was essentially that Canada should adopt EU IP rules in most areas. The EU is considered to have very strict IP protection legislation, and this negotiating position reflects its belief that Canada's legislation in this area is outdated and relatively weak.

Since late 2009, however, the Government of Canada has proposed legislation to modernize Canada's IP legislation. Bill C-32, An Act to amend the Copyright Act (short title: Copyright Modernization Act), was given first reading in the House of Commons on 2 June 2010. Canada's trade negotiators have stated that Canada considered the EU and the US models in designing the bill and that the proposed legislation would help to advance CETA negotiations; EU negotiators have indicated that the provisions in Bill C-32, if implemented, would go a long way toward addressing many of their concerns.

An IP issue that is likely to pose a challenge for Canadian and EU negotiators is the EU's system of geographical indications (GIs) for certain food products. GIs identify a product as originating in a specific region, with the suggestion that certain characteristics of that product are attributable to its geographical origin. Once a GI has been registered in the EU, the regional appellation may be used only in products meeting the specified criteria. A common example is *Parmigiano–Reggiano* cheese. According to the EU's list of GIs, that name may be used only by cheeses meeting a certain description and produced at least in part in the Parma, Reggio Emilia or certain other regions in Italy. Derivatives or variations of the name, including "parmesan" or "parmesan-style," are also prohibited.

The EU places a high priority on gaining international support and recognition for its GI system as well as its list of GI products. Its primary reasons for protecting GIs are to preserve the reputation of regional food products and to provide certainty to customers. All trade agreements signed by the EU to date have recognized its GIs.

Although Canada and the EU signed an agreement in 2003 that mutually recognizes GIs for certain wines and spirits, Canada and the EU have fundamentally different systems for the naming and classification of food products. While the EU uses GIs to identify and define certain food products (mainly cheeses and meats) as coming from a specific country or region, Canada employs a trademark certification system for food. As a result, some of the terms considered GIs in the EU are parts of trademarked product names in Canada, or are considered generic terms describing foods made using specific ingredients or produced according to specified manufacturing standards. For example, in Canada, the name *Parmigiano–Reggiano* is used to describe a certain type of cheese, regardless of where it was made, while in the EU, the cheese must be at least partially produced in certain regions of Italy for that name to be used.

The EU's recently signed trade agreement with South Korea includes formal recognition of the EU's system of GIs and a list of recognized GI products. That list provides an indication of the kinds of products that the EU will likely be looking to protect in a CETA with Canada. It includes products such as asiago, fontina, parmesan, gorgonzola, pecorino romano, feta and roquefort cheeses, as well as meat products such as Parma prosciutto and mortadella Bologna, among others.

Canada could benefit if it agrees to recognize the EU's system of GIs. Some maintain that GIs, which are similar to trademarks, serve a legitimate business purpose, and that there is value in protecting local agricultural traditions and encouraging the type of product innovation that led to the creation of these unique foods. Moreover, Canada could benefit from a GI system that would formally identify and protect certain Canadian food products, such as artisanal cheeses.

However, depending on the scope of the EU's protected GI designation, recognition in a CETA of the extensive list of existing GIs in the EU could present a considerable challenge for Canadian agricultural producers, grocery retailers and others who produce, distribute or sell similar products. GIs that identify unique products as coming from a certain region (camembert de Normandie, for example) would not have a major effect on Canadian businesses, but if the EU were to insist that camembert cheese generally or products like salami or feta cheese constitute GIs, Canadian producers of similar goods could be limited in identifying or promoting their products. There are concerns that a system of GIs that is too broad could become a form of disguised protectionism and have a significant negative impact on Canadian producers.

Canadian trade negotiators have indicated that differences between the Canadian trademark system and the EU's GI system of intellectual property protection for food products will be one of the more complex issues in CETA negotiations. Given its history, the EU is unlikely to make concessions regarding GIs, while the impact on Canada of adopting the EU's system of GIs is not yet known.

One possible compromise could be to allow all Canadian trademarked product names that existed before the registration of the GI in question to remain, while any new trademarked name that refers to an established GI would be invalid. Other possibilities could be to allow Canada to phase in EU GIs gradually, or to allow

Canadian producers to use the term “Canadian-style” when a GI has long been established as a product type in the Canadian market.

NOTES

1. Other subjects covered in this series are market access in agriculture, non-agricultural market access, trade in services, investment protection, government procurement, technical barriers to trade and regulatory cooperation, labour mobility and dispute settlement.