CETA Comes Into Force: Canada and the EU at the Vanguard of Free Trade

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On July 8, 2017, Canadian Prime Minister Justin Trudeau and European Commission President Jean-Claude Juncker announced the provisional application of the Comprehensive Economic and Trade Agreement (CETA) between the European Union (the "EU") and Canada, beginning on September 21, 2017.

The timing is significant, both symbolically, as 2017 marks the 150th anniversary of the creation of the Canadian federation and the 60th anniversary of the Treaty of Rome which set the stage for the establishment and development of the EU, and politically, since CETA, which is hailed as the most ambitious free trade agreement between two trading partners, will come into force within a climate of suspicion towards multilateralism exemplified by, among other things, Brexit and the United States' hard stance on free trade.

Between now and September 21, 2017, the Canadian federal government and Canadian Provinces will enact regulations implementing CETA in Canada (no further implementing steps are required in the EU), and Canada and the EU will consult with one another to ensure an optimal start for the deal. From and after September 21, 2017, the application of CETA will remain provisional pending ratification by each EU member state and several EU regional legislatures, a process that could take more than two years.

This new partnership with the world's second largest economy and second largest importing market for goods, as well as Canada's second largest trading partner (after the United States), will offer tremendous opportunities for Canadian businesses. We summarize some of these key benefits below.

First and foremost, CETA is expected to significantly boost the export of Canadian goods to the EU. As of September 21, 2017, 98% of EU tariff lines (compared to 25% today) will be duty-free for Canadian goods, and an additional 1% relating to more sensitive products (such as fisheries or automotive products) will be eliminated over a seven-year phase out period. In addition, CETA contains a number of measures that aim at reducing other barriers to trade to complement this near elimination of tariffs. Among other things, CETA: (i) sets out Rules of Origin mechanisms to help clarify which goods qualify as "Canadian" and are thus eligible for preferential tariff treatment; (ii) allows businesses to request advance rulings on tariff classification; (iii) simplifies measures to process goods at customs (which should reduce transactional costs); (iv) improves the cooperation between EU and Canadian standard-setting, testing, certification and accreditation organizations to avoid double certification; (v) ensures that sanitary and phytosanitary rules (which are rules that aim at ensuring that food is safe to eat) are not used as protectionist measures; and (vi) encourages the involvement of private businesses in the development of technical regulations. Taken as a whole, these measures should make Canadian businesses more competitive in the EU, provide them with greater export opportunities and assist them with navigating the EU regulatory requirements system.

Second, the opening of EU public procurement to participation by Canadian businesses is another major achievement of CETA. Building up on the commitments that the EU already made in this respect as a party to the World Trade Organization *Agreement on Government Procurement*, CETA will allow Canadian businesses to bid in a non-discriminatory, impartial, transparent and accountable manner on most of the $3.3 trillion EU government procurement market, including public contracts for EU institutions, the national governments of EU member states, the regional and municipal entities within these member states, certain gas, electricity, heat and water utilities and certain transportation operators, provided such procurement activities exceed prescribed monetary thresholds.

Third, CETA will greatly facilitate the provision by Canadian businesses of services to the EU, which is the largest service importer in the world. CETA follows a "negative list" approach, meaning that all existing and future service sectors will be liberalized unless otherwise indicated in the text of the treaty. Accordingly, Canadian service providers will be granted the same treatment and market access as currently enjoyed by EU service providers in most service sectors, including mining services, certain services related to energy, environmental services and certain professional services, but excluding sensitive sectors such as public transport, education, health, social services and water supplies. To further facilitate the provision of services by Canadian businesses, CETA will enable greater labour mobility by, among other things, easing rules for the short term stay of business people and encouraging mutual recognition of professional qualifications. In addition, CETA explicitly lists existing market rules and regulations and prohibits regulatory or legal changes making them more restrictive (except in sensitive sectors such as the ones described above), which is expected to provide Canadian service providers with unprecedented transparency.

CETA spans over 30 chapters and close to 1,600 pages, and therefore contains many more provisions that will benefit Canadian businesses. That being said, one must also keep in mind that European businesses will enjoy similar benefits in Canada, which will likely enhance competition at home.

We are monitoring the implementation of CETA and will be reporting from time to time on the process. In the meantime, should you have any questions about CETA or its implications for your business, please contact Pascal de Guise, Pierre Permingeat or Olivier V. Nguyen at the contact information below, or your BLG lawyer.

By

Pierre Permingeat

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749