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# Tax Alert – Canada

## Canada-EU Comprehensive Economic and Trade Agreement (CETA) takes effect

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

After several delays, Canada and the European Union (EU) formally implemented the CETA on a provisional basis on 21 September 2017. CETA is the most ambitious Canadian trade agreement to date; as of implementation, 98% of Canadian and EU tariff lines are duty free, with another 1% of tariff lines to be staged out over a number of years. Canadian and European businesses will now have increased access to a market spanning approximately 535 million people.

### Provisional application

The European Council's decision of 5 October 2016 allowed all but the contentious investment dispute provisions of CETA to apply on the day the EU and Canada exchange letters of agreement. This occurred on 8 July 2017 and set 21 September as the in-force date. (There is a 180-day period from this date to enact immigration law regulations to allow professional mobility business visitor visa rules, although Canada has already enacted its new rules.) Full ratification of CETA still requires unanimous support from all 28 EU member states, and provisional application will exclude specific provisions having to do with:

- ▶ Investment protection;
- ▶ Investment market access with regards to portfolio investment; and
- ▶ The Investment Court System.

These controversial provisions may delay or postpone the ongoing ratification process as there is no scheduled timetable for full ratification of the agreement. To date, Latvia, Malta and Denmark are the only EU member states to have ratified CETA. It is unclear what impact failure to ratify would entail.

## Increased market access

The elimination of EU tariffs is expected to benefit several economic sectors in Canada, including advanced manufacturing, agriculture and agri-food, automotive, chemicals and plastics, fish and seafood, forestry and value-added wood products, metal and mineral products, and technology. The following tariff changes came into force upon provisional application of the agreement:<sup>1</sup>

- ▶ **Industrial goods:** 99.6% of Canadian tariff lines on industrial goods and 99.4% of EU tariff lines were eliminated. The remaining tariff lines will be gradually eliminated over seven years after entry into force of CETA.
- ▶ **Fish:** Canada eliminated all tariffs on imported fish products, and the EU eliminated 95.5% of its tariffs. Any existing Tariff Rate Quotas (TRQs) will expire once the duties of the relevant tariff lines are fully eliminated.
- ▶ **Agriculture:** Canada eliminated duties for 90.9% percent of all agricultural tariff lines, while the EU eliminated 92.2% of its agricultural tariffs. Under CETA, Canada also established a TRQ for imports of dairy products (cheese) from the EU. As for the EU, it granted additional market access to Canadian exporters through a TRQ system for beef, pork and sweet corn. Duty-free (in-quota) for these agricultural products will be phased in over a five-year period. For more detail on these changes, see Annex 2-A of the CETA text or consult your EY Global Trade Canada contact.

## Access to government procurement

Under CETA, Canadian suppliers will benefit from access to all levels of the EU procurement market, which is estimated at approximately \$3.3 trillion per year. Canada and the EU's commitments with respect to government procurement are contained in Chapter 19 of the agreement.

## Origin quotas under CETA<sup>2</sup>

In most cases, whether goods qualify as "originating" – and therefore are eligible for preferential tariff treatment – will depend on meeting the product-specific rules of origin contained in Annex 5 of CETA's *Protocol on Rules of Origin and Origin Procedures* (the Protocol). However, Canada and the EU also established several "within access" origin quotas to allow set quantities of certain listed goods to qualify as originating under an alternative set of product-specific rules.

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<sup>1</sup> European Commission statement, *CETA - Summary of the Final Negotiating Results*, European Commission, 2016 (accessed via <http://trade.ec.europa.eu, 1 September 2017>).

<sup>2</sup> Global Affairs Canada, *CETA Origin Quotas* (accessed via [http://www.international.gc.ca/controls-controles/prod/ceta\\_origin\\_quotas-contingents\\_origine\\_aecg.aspx?lang=eng](http://www.international.gc.ca/controls-controles/prod/ceta_origin_quotas-contingents_origine_aecg.aspx?lang=eng), 15 September 2017).

Origin-quota eligible goods, associated product-specific rules of origin, and annual quota allocation amounts are contained in Annex 5-A of the Protocol; these origin-quota goods include certain:

- ▶ Agriculture products;
- ▶ Fish and seafood;
- ▶ Textiles and apparel; and
- ▶ Vehicles

Importers and exporters who wish to trade origin-quota eligible products should be mindful of associated export and import permit requirements that Canada established under the *Export and Import Permits Act* (EIPL). All textile and apparel imports under Canadian origin quotas require an import permit issued by Global Affairs Canada; exports to the EU of certain sugar confectionery and chocolate preparations, processed foods, dog and cat food, and vehicles require an export permit. No Canadian export permits are necessary for fish and seafood, or textile origin-quota eligible products.

## Rules of origin

The CETA rules of origin incorporate best practices from other Canadian and European FTAs as well as NAFTA and are an improvement over NAFTA's rules of origin from a simplification point of view. The CETA rules are also more flexible; although, this could lead to uncertainty.

Certain of the rules stem from the Canada - European Free Trade Association Free Trade Agreement.<sup>3</sup> Goods generally will originate for purposes of CETA if:

- ▶ they are "wholly obtained", such as goods that are grown, raised, caught or extracted in Canada or the EU;
- ▶ they are produced in Canada or the EU entirely from originating materials; or
- ▶ they are produced in Canada or the EU from some non-originating materials that undergo sufficient production in Canada or the EU such that the resulting good satisfies the applicable product-specific rule of origin (PSRO) set out in Annex 5 of the Protocol and meet certain origin quotas (e.g., vehicles).

CETA also contains provisions that open the possibility for cross-cumulation of origin. This means that products originating in a country with which both Canada and the EU have a free trade agreement (e.g., Mexico) may be considered in determining whether a product is originating under CETA. Additionally, should the EU and the US enter into a free trade agreement, producers will be entitled to count US materials toward the originating status of Canadian or EU goods of Chapter 2 or 11, heading 16.01 through 16.03, Chapter 19, heading 20.02 or 20.03, or sub-heading 3505.10, subject to agreement by Canada and the EU on the applicable conditions.

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<sup>3</sup> Global Affairs Canada, *Canada-European Union Comprehensive Economic and Trade Agreement - Canadian Statement on Implementation*. Canada Gazette, Part 1, Vol. 151, No. 37.

CETA introduces new procedures for validating the origin of goods – different from the ones Canadian businesses have become accustomed to under NAFTA. For example, CETA recognizes proof of origin of goods based on an “origin declaration” rather than a “certificate of origin” under NAFTA. The origin declaration is an exporter self-certification process, whereby the exporter attests to the originating status of the goods by placing a prescribed statement on the invoice or other relevant commercial documentation.<sup>4</sup> EU exporters will need to provide a Registered Exporter (REX) number and provide it in field 2 of the origin declaration, and Canadian exporters will need to provide their Business Number (BN) in the same field. Currently, EU exporters that are not yet registered for REX can simply add their signature in field 5 of the origin declaration in place of the REX number; however, as of 1 January 2018, EU exporters will have to be registered for REX.

## **New origin verification procedures**

CETA introduces new origin verification procedures for the respective customs authorities to verify the originating status of goods exported from their own jurisdictions. Regulations setting out the new verification procedures under CETA were announced on 14 September by the Canada Border Services Agency (CBSA), but have not yet been released.<sup>5</sup> These new procedures are likely to carry important compliance and record-keeping obligations relevant to exporters.

## **Are businesses ready for CETA?**

Beyond the reduction in tariffs, which is a dramatic change for Canadian importers and exporters to take advantage of, transatlantic businesses must deploy change management strategies to tackle the operational changes and challenges that will be brought on by CETA. Potential change management challenges under the new rules include:

- ▶ Potentially better cost to market for CETA preferential tariff users, which requires application of new proof-of-origin rules (especially challenging with regards to supplier compliance functions);
- ▶ Some exporters may face new “rules of origin derogations” for exports, which will allow certain non-originating products to be deemed originating, e.g., in the textile and apparel industry;
- ▶ Some importers will require new preferential quotas and import or export permits to enjoy new market access;
- ▶ Newly protected “Geographical Indications” for agri-food products means protection for European producers but potentially new marketing compliance burdens for Canadian producers;

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<sup>4</sup> The statement can be found in Annex 2 of the *Protocol on Rules of Origin and Origin Procedures*.

<sup>5</sup> See Customs Notice 17-29, *Proposed Regulatory Amendments and Proposed New Regulations Related to the Implementation of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA)*.

- ▶ New rules respecting the migration of professionals and the recognition of professional qualifications (Mutual Recognition Agreements, or MRAs) need to be considered by human resources functions. Within 180 days after the entry into force of CETA, Canada and the EU must make available clarifications for the requirements for temporary entry for business and professional travellers. Canada has already released new instructions for temporary entry of business persons under CETA;<sup>6</sup>
- ▶ Special rules will allow for the preferential treatment of certain services provided by European vessels in Canadian waters, such as marine dredging, but these will likely be subject to specific compliance issues; and
- ▶ New rules respecting public procurement will need to be considered by procurement and contract managers claiming national treatment for their bids.

The Government of Canada describes CETA as setting “new standards for trade in goods and services, non-tariff barriers, investment, government procurement, as well as in areas like labour and the environment”.<sup>7</sup> Canadian businesses are urged to examine the benefits and challenges under CETA affecting business competitiveness. With new opportunities also come new business disruptors. Canadian businesses must be prepared for the changes and challenges that lie ahead. It is a progressive free trade agreement that covers virtually all sectors and aspects of Canada-EU trade in order to eliminate or reduce barriers.

## Learn more

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<sup>6</sup> Government of Canada website, new instructions for the temporary entry of business persons under the Canada-European Union (EU) Comprehensive Economic and Trade Agreement (CETA) (accessed via <http://www.cic.gc.ca/english/resources/tools/updates/2017/07041530.asp>, 21 September 2017).

<sup>7</sup> Government of Canada, Brochure: The Comprehensive Economic and Trade Agreement is a big deal for Canadian companies <http://www.international.gc.ca/gac-amc/campaign-campagne/ceta-aecq/brochure.aspx?lang=eng&wbdisable=true>.

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