The EU-Canada Free Trade Agreement: What will it Mean for Agriculture in NAFTA?

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Presented at: The International Agriculture Trade Research Consortium Meeting, San Diego, December 2012


EU-Canada Summit
Sommet UE-Canada
Brussels/Bruxelles
05.05.2010

Negotiation History

- May 6, 2009:
  - Canada-EU Summit Prague – announcement of launching negotiations for a Comprehensive Economic and Trade Agreement (CETA);
- Negotiations have been very secretive
- By early 2012
  - There had been 12 negotiation sessions and the ***parties are confident negotiations will be wrapped up by the end of the year*** – **but…….**
- Meeting at the end of November 2012
  - Well publicized meeting with Ministerial Attendance
  - Move beyond trade negotiators to the political level
- No deal agreed – so maybe 2013 or 20??

Outstanding Issues in Nov. 2012

- Patents of Pharmaceuticals
- Investment Access
  - To Canadian telecommunications, postal service, maritime transport, air transport
  - EU wants its investors exempt from Canadian *ex ante* reviews
- Investor Protection
  - Canada wants to be able to expropriate without compensation for "legitimate" policy objectives (NAFTA Chapter 11 experience overly constraining).
- Public Procurement (at the provincial and municipal levels in Canada)
- Rules of Origin (no backdoor access to EU market for cars – among other things)
- Cultural Protection
- Labour standards
- And of course **AGRICULTURE**

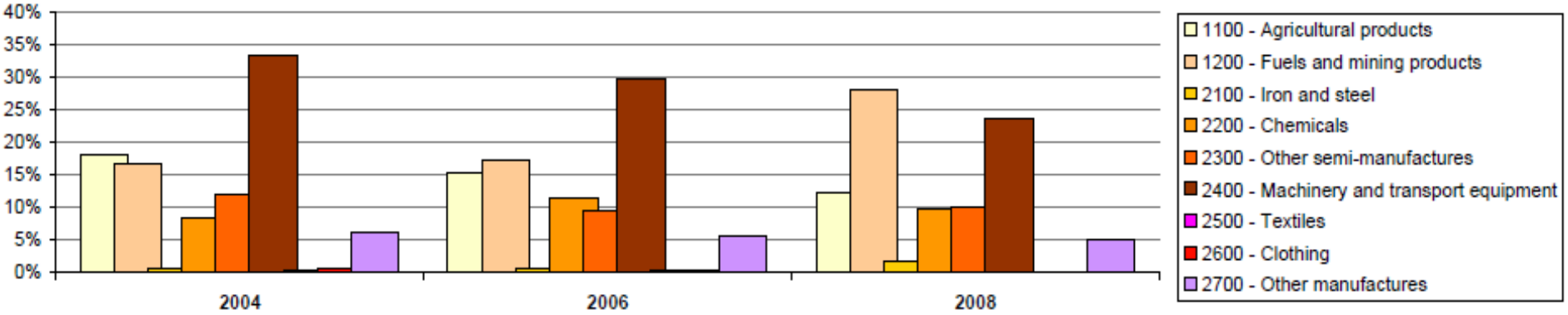
CETA Background

- **October 2008:**
  - Joint study: *Assessing the Costs and Benefits of a Closer EU-Canada Economic Partnership;*
  - Benefits:
    - 0.08% increase in EU GDP;
    - 0.77% increase in Canada GDP;
    - Assumption: Doha Round completed and successful.
- **March 2009:**
  - *Joint Report on the EU-Canada Scoping Exercise* – main areas of negotiations:
    - Trade in goods and services; investment; government procurement; regulatory cooperation; intellectual property; temporary entry of business people; competition policy; labour and environment.
  - Predictable sensitive issues:
    - Agriculture; ship building; alcoholic beverages; trade remedies; health and safety standards; environmental regulations; intellectual property and government procurement.

EU–Canada trade relations

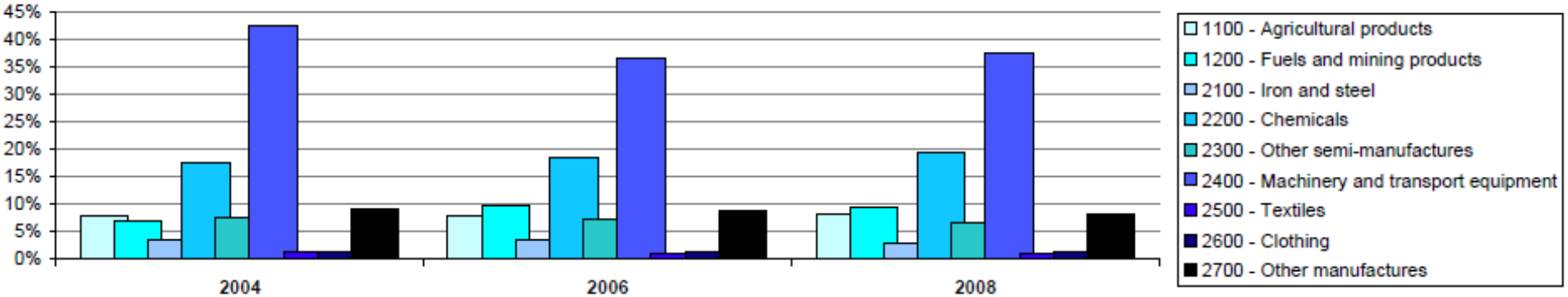
- **Strong two-way trade and investment:**
  - EU is Canada's second-largest trading partner:
    - Exports to the EU: CAD $52.2 billion (2008);
    - Imports from the EU: CAD $62.4 billion (2008);
  - EU is Canada's second-largest source of FDI:
    - CAD $133.1 billion (2008);
  - Canada is ranks only in 11th place on the EU list of trading partners;
  - Canada is the EU's fourth largest source of FDI:
    - 21.4% of Canadian FDI abroad (2007).

Figure 1: EU imports from Canada



Source: EUROSTAT

Figure 2: EU exports to Canada



Source: EUROSTAT

Agricultural trade (2009):

- Canada's exports to EU: $1.7 billion primary agricultural products; $720 million manufactured foods;
- EU's exports to Canada: $250 million primary agricultural products; $1.5 billion manufactured foods.

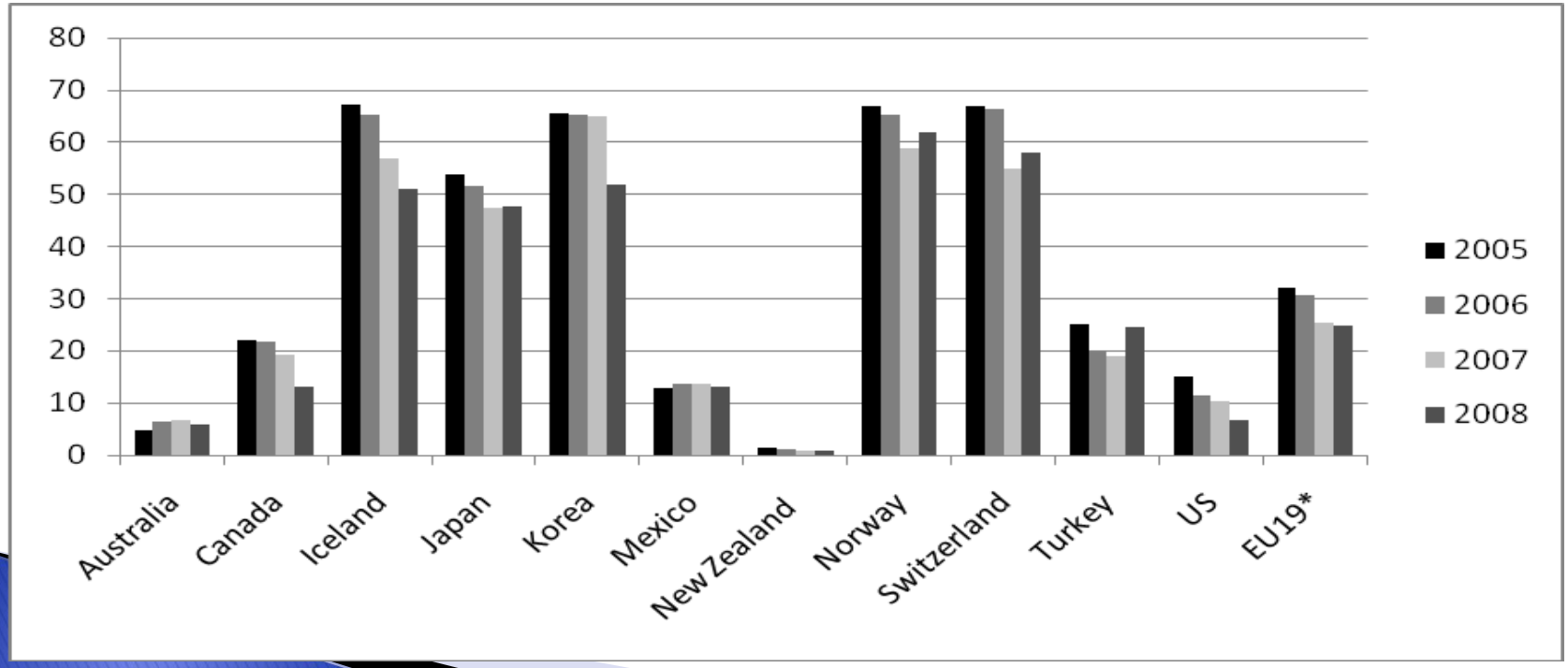
Barriers to agricultural trade

- **Market Access:**
  - Canadian tariffs decreased on a trade weighted basis;
  - Access to Canadian supply managed products highly restricted:
    - TRQs with out-of-quota tariff rates in the range of 100% to 250%;
    - Small TRQ quantities: 3-10% of consumption;
  - EU tariff rates lowered, but they are still high:
    - In excess of 35% (54% for dairy products);
    - Fish, shrimp and sea food sub-sectors still heavily restricted by high tariffs and TRQs.

Barriers to agricultural trade

- Trade distorting subsidies:
  - **Domestic support:**

Figure 3: Producer Support Estimate (%) by selected country (2005-2008)



Source: OECD (2009)

Barriers to agricultural trade

- Trade distorting subsidies:
  - **Export subsidies:**

Table 2: Use of export subsidies: Averages from 1995 to 2000 by country

	Average 1995–2000 (Million $)	%		Average 1995–2000 (Million $)	%
EU	5 503.4	88.7	Israel	6.6	0.1
Switzerland	311.5	5.0	Mexico	3.8	0.1
Norway	85.7	1.4	Cyprus	2.9	0.0
USA	83.6	1.3	Australia	0.6	0.0
Canada*	54.5	0.9	Iceland	0.0	0.0
Czech Republic	37.1	0.6	New Zealand	0.0	0.0
Turkey	28.4	0.5	Romania	0.0	0.0
Poland	21.7	0.3	Bulgaria	0	0
South Africa	18.6	0.3	Brazil	0	0
Hungary	16.9	0.3	Indonesia	0	0
Colombia	12.8	0.2	Panama	0	0
Slovak Republic	10.8	0.2	Uruguay	0	0
Venezuela	7.8	0.1			
			Total	6 206.7	100

Source: Peters, 2006

Barriers to agricultural trade

- **Sanitary and Phytosanitary Measures:**
  - Science as justification for imposition of barriers to trade;
  - Major disagreements between Canada and the EU:
    - On science itself;
    - Science should be the sole factor in the establishment of SPS import regulations?
  - 2 high profile SPS disputes since 1995:
    - EU import ban on Genetically Modified Organisms (GMOs);
    - EU import ban on beef produced using growth hormones.

Barriers to agricultural trade

- **TBT:**
  - Major contentious area: labelling requirements for imports;
  - Increased consumers' interest regarding credence attributes: animal welfare; child labour; use of GMOs; environmentally friendly; use of pesticides;
  - TBT agreement:
    - Import labels cannot be required on the basis of how a product is produced (except when final product is discernibly different);

Expectations for Agriculture

- **European subsidies:** domestic and for export
  - Must be dealt with at WTO
- **Barriers to market access:** different motivations for imposition
  - Will European export-subsidy motivated tariffs be lowered?
    - Create a *fast track* mechanism for tariff anomalies, regulatory vacuums and bureaucratic inertia;
    - Example: Canadian bison meat – classified as beef;
    - Layered barriers to trade;
  - Protection of consumers, environmentalists and other social groups in EU: bilateral exceptions?
    - Principle of non-discrimination;
    - Example: import ban on seal pelts from Canada and GM products; green labeling, organic standards, animal welfare etc.
    - Import ban on beef produced using growth hormones
      - Increase *Hilton Quota* to the point where production of beef without hormones is economic.
  - Market access for biofuels?

Expectations for Agriculture

- **Barriers to market access:**
  - Supply management in Canada: especially dairy products;
    - Example: supply management defended in CUSTA, NAFTA, Uruguay and Doha Rounds;
  - Wines:
    - Purchasing/sale practices of monopsonistic/monopolistic provincial government liquor boards in some Canadian provinces;
- **A grand bargain likely**; modest gains.

Other Potential Issues for Agriculture

- **Trade and the environment:**
  - Precautionary principle and Biosafety Protocol;
  - Environmental tariffs;
    - *Environmental dumping;*
- **Geographical Indicators (GIs):**
  - A form of intellectual property;
  - Required protection from the state because value of goods is primarily derived from *credence attributes;*
    - Originally based on the idea of *terroir*;
    - EU expanded the set of characteristics: localized human capital-based knowledge;
  - Contentious international issues:
    - *Generic* terms;
    - Foreign protection for less well known or new EU GIs designations.

Provided to WTO Members, 2003	Canada-EU Agreement
Beaujolais	n/a
Bordeaux	Bordeaux
Bourgogne	Bourgogne (also: Burgundy)
Chablis	Chablis
Champagne	Champagne
Chianti	Chianti
n/a	Claret
Cognac	n/a
Grappa di Barolo, del Piemonte, di Lombardia, del Trentino, del Friuli, del Veneto, dell'Alto Adige	Grappa
Graves	n/a
Liebfrau(en)milch	n/a
Malaga	Malaga
Marsala	Marsala
Madeira	Madeira
Médoc	Médoc (also: Medoc)
Moselle	Moselle (also: Mosel)
Ouzo	Ouzo
Porto	Porto (also: Port)
Rhin	Rhin (also: Rhine)
Rioja	n/a
Saint-Emilion	n/a
Sauternes	Sauternes (also: Sauterne)
n/a	Sherry
Jerez, Xerez	n/a

Marketing Without the GI

Non-Wine and Spirit Designation Protection Sought by the EU

Asiago - cheese
Azafrán de la Mancha - saffron
Comté - cheese
Feta - cheese
Fontina - cheese
Gorgonzola - cheese
Grana Padano - cheese
Jijona y Turrón de Alicante - confection
Manchego - cheese
Mortadella Bologna – meat product
Mozzarella di Bufala Campana - cheese
Parmigiano Reggiano - cheese
Pecorino Romano - cheese
Prosciutto di Parma – meat product
Prosciutto di San Daniele – meat product
Prosciutto Toscano – meat product
Queijo São Jorge - cheese
Reblochon - cheese
Roquefort - cheese

Other GI Products on EU list

- Foie Gras
- Munster Cheese
- Bratwurst

- EU has over 6000 GIs and is adding approximately 300 per year – and wants general recognition of existing and future GIs (unless considered generic)

Conclusions on Agriculture in CETA

- **Original premise:** agricultural issues taken care in Doha agreement;
  - Agreed *sensitive products* lists (Canada's supply managed products removed from the *table* in CETA);
  - EU export subsidies eliminated;
  - New regimes for domestic support.
- **Doha Round suspended:**
  - *Everything is on the table* at CETA negotiations;
  - Opt for *status quo?*
    - *No go* areas for EU negotiators: market access for products facing resistance from consumers, environmentalists and other groups;
    - *No go* areas for Canadian negotiators: supply managed products;
    - Difficult negotiations on: trade and environment, environmental dumping and GIs.

Ramifications for NAFTA

- Erosion of NAFTA Preferred Access
  - US Wines in Canadian Liquor Stores
  - If major increase in TRQ quota for dairy – to the EU
    - Canada has also had to agree to negotiate over access for dairy and poultry product at the Trans-Pacific Partnership negotiations
- Higher Environmental Standards for export to Canada
- Canada more competitive in the EU market for wheat if EU lowers tariff on Canadian wheat in CETA
- Preferred access to EU market for Canadian biodiesel
- Reduced market access for trademarked and generic products that conflict with EU GIs that Canada agrees to recognize.

US Producer Concerns with EU GIs

U.S. Trade Officials last week met with their South Korean counterparts in Seoul to discuss U.S. demands that South Korea not implement the European Union-South Korea free trade agreement in such a way as to undermine expected benefits for dairy exports under the U.S.-Korea FTA, sources said. …

At issue is the fact that the EU-Korea FTA outlines specific protections that South Korea must uphold for geographic indications (GIs) including various cheeses. …

The EU has long pushed to establish GI protections through trade agreements, which pose some risk to U.S. exporters.

Inside US Trade
October 14, 2010

US Producer Concerns with EU GIs

On September 27, 2010, fifty-six members of the Congressional Dairy Farmers Caucus sent a letter to Ambassador Ron Kirk, the United States Trade Representative, to share their concerns:

... *with the European Union's (EU) aggressive escalation of its efforts to secure unfair market advantage through the misuse of Geographical Indicators (GI). We are particularly concerned with the EU's current efforts with regard to the Free Trade Agreement (FTA) it has negotiated with South Korea ...*

We urge you ... to ensure that as the Koreans develop the domestic implementing regulations of GIs, those regulations do not undercut the dairy market gains secured in the US-Korea FTA. Specifically, we are very concerned that the implementing regulations of the EU-South Korea FTA will contain GI provisions that will greatly diminish, if not foreclose, the market opportunities available to many U.S. cheeses and other agricultural products. Moreover, it must be noted that any such advantage gained by the EU will be magnified because it would set a precedent that could and likely would be, readily replicated in EU-negotiated FTAs in a number of other foreign markets of importance to the U.S. dairy industry. These markets include ***Canada****, Central America, China, Columbia and Peru, as well as many others (emphasis added).*

Sui generis versus trademarks

A World Divided

Of the 166 countries that protect GIs as a form of intellectual property, 110 (83 plus the EU 27) have specific or *sui generis* systems of GI laws in place. Then, there are 56 countries using a trademark system, rather than or in addition to specific GI protection laws. These countries utilize certification marks, collective marks or trademarks to protect GIs.

D. Giovannucci, T. Josling, W.A. Kerr, B. O'Connor and M.T. Yeung (2009) *Guide to Geographical Indications – Linking Products and Their Origins*, Geneva, International Trade Centre, 207pp.

NOTE: *Sui generis* is the Latin expression, literally meaning "of its own kind" or "unique in its characteristics".

Preferential Trade Agreements and Loss of Market Access

In the GATT (Article XXIV:6), if the country entering the customs union has to raise its tariffs to equal those that are applied in the custom union's common external tariff, then trading partners not joining the customs union can face a loss of market access and expected trade benefits will be forgone. In such a case**, the countries suffering loss of market access have a right to compensation.**

Does the same principle apply for TRIPS violations if the US loses market access to Canada if Canada recognizes EU GIs in the CETA?

A WTO Disputes Panel Would Have to Decide – the US could make a strong case

NAFTA Commitments on Intellectual Property

NAFTA Chapter 17 on intellectual property

- principle of *first in time, first in right* – thus NAFTA trademarks supersede CETA GIs – suggests compensation

NAFTA 1712 deals specifically with GIs

- Existing trademarks cannot be superseded by a subsequent GI – implies compensation

NAFTA Investment provisions (Chapter 11)

- 1139 protects intellectual property rights such as appellations
- Hence a complaint could be brought by a US exporter, to receive compensation

NAFTA Non-Violation Provision (Chapter 20)

- specifically protects intellectual property
- a case brought to a NAFTA disputes panel

Conflict over GIs – NAFTA vs CETA

- EU is pushing hard for GI recognition by Canada in CETA
- If agreed this would be a major change for Canada which protects this form of intellectual property with trademarks
- If EU GIs recognized by Canada US exporters would lose market access – would still be able to sell their product in Canada but not using the former name
- US producer groups are aware of their potential loss
- Could bring a case to receive compensation at WTO and through NAFTA
- Could be very important if there is a change to supply management in Canada in future – with EU GIs recognized in Canada a considerable portion of potential US export expansion to Canada could be limited

The CETA Agriculture and NAFTA

- Some erosion of the benefits of preferred access to Canada under NAFTA
- Some erosion of competitiveness of US products in the EU market due to improved Canadian access
- If EU GIs recognized in CETA US could lose due to nullification of benefit – which can lead to formal disputes and compensation being sought

Thank you

References

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