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Protectionism is "Alive and Well" – Agriculture in the EU-Canada Trade Agreement

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Abstract: After six years of secret negotiations the agreed text of the trade agreement between the European Union and Canada was released in September 2014. The Comprehensive Economic and Trade Agreement (CETA) must still be ratified by the respective legislatures. Agricultural trade was expected to be a contentious issue in the negotiations with both Canada and the EU having sensitive areas where liberalization would be difficult. In Canada, the domestic policy for dairy and poultry – supply management – requires support from high trade barriers. In the EU, some SPS barriers are non-negotiable – GMOs and use of growth hormones in beef production. The eventual bargain leaves these trade inhibiting measures largely intact. Some liberalization was achieved in other areas such as recognition of EU geographical indications in Canada, reduced barriers to sales of EU wine, increased market access for EU cheeses and expansion in EU TRQs for wheat, hormone free beef and pork.

Keywords: Agri-food trade, Canada, EU, preferential agreement, protectionism

JEL: F53, Q17

1. Introduction

Unlike World Trade Organization (WTO) negotiations which are conducted in an open and transparent fashion with preliminary texts published with areas where disagreements remain bracketed, there is a current trend in preferential trade agreements to conducting negotiations in strict secrecy. While secrecy makes life easier for negotiators and politicians who are freed, to a considerable degree, from having to deal with the pleadings and demands of vested interests during the negotiations it also stifles debate on important issues in public policy and replaces analysis with speculation (Viju et al., 2010). The negotiation of the Comprehensive Economic and Trade Agreement (CETA) between the European Union (EU) and Canada were conducted in strict secrecy with the text released as a "done deal" on September 26, 2014. The agreement still must be ratified by the EU Parliament, the EU Council and individual member states of the EU as well as the Canadian Parliament. Given the secrecy surrounding the negotiations, an analysis of the likely effects of the CETA for agricultural trade has not previously been possible. This paper provides an analysis of a range of facets of the agreement that pertain to agriculture including tariff reduction, tariff rate quotas (TRQs), export subsidies and domestic support for farmers, geographical indications, wines and spirits, trade and the environment, sanitary and phytosanitary justified trade restrictions, sustainable development and trade in the products of biotechnology. An analysis of what was not included in the CETA is also provided because issues that are not addressed in trade agreements can be areas where major barriers to trade remain.

Agriculture and food trade is consistently a very difficult area for negotiations aimed at liberalizing international trade (Gaisford and Kerr, 2001). Agricultural trade policy is typically enlisted to support the broader policy aims of agricultural policy, particularly in developed countries where the constant force of technological change over the last century and a half has led to the exit a large proportion of the farm population (Johnston, 1973). A major focus of developed country agricultural policy has been attempts to slow the pace of exit. Trade policy restrictions on imports meant a larger proportion of food consumption was sourced domestically and expansion of agricultural exports increased agricultural production – both of which are seen as contributing to the retention of farmers (Gaisford and Kerr, 2001). These agricultural trade policy goals run counter to the objectives of multilateral trade institutions such as the World

Trade Organization (WTO) and preferential trade agreements such as the CETA. Further, more recently, negotiations in agricultural and food trade have become difficult because of consumers concerns regarding the safety of foreign sourced food (Kerr, 2010a; Liu et al., 2009) and the potential for imports to negatively impact both the cultivated and natural environment (Holtby et al., 2007). In short, those asking their governments for protection have expanded from traditional producer vested interests to include consumer and environmental groups in civil society (Kerr, 2004). Both Canada and the EU heavily protect certain "sensitive" agricultural sectors, although Canada is a major agricultural exporter with sectors that could benefit considerably from increased market access to the EU. Further, procedures for evaluating new technologies such as biotechnology differ considerably between the EU and Canada leading to disagreements over sanitary and phytosanitary-based trade restrictions (Isaac, 2007).

While some had high hopes for the liberalization of agricultural trade as a result of the CETA negotiations, others were less optimistic. Given that the negotiations were held in strict secrecy, analysts could only speculate on the major agricultural issues in the negotiations, or even on what topics would be on the agenda. Canadian officials, for example, stated more than once that "everything is on the table" but there was considerable scepticism that this was, indeed the case, given the Canadian government's commitment to support its "supply management" systems for dairy and poultry through the use of very restrictive TRQ quota quantities and very high above quota tariffs and the EU's politically sensitive trade restrictions on imports of agricultural products produced using biotechnology (Viju et al., 2010). At the time there was considerable speculation that the "ambition" for agriculture in the CETA would be quite modest – there was the making of a "grand bargain" where, in return for not pushing hard for increased market access in dairy and poultry by the EU, Canada would not push hard for EU liberalization in the case of biotechnology and other SPS issues such as imports of beef produced using growth hormones (Viju and Kerr, 2011). The major agricultural issues identified leading up to and during the negotiations were, beyond market access for products where the Canadian policy of supply management applied and the EU import regimes for biotechnology and beef produced using growth hormones, Canadian recognition of EU geographical indications, the pricing of EU wines and spirits in Canada, market access into the EU for Canadian grains and livestock products, standards for sustainable agricultural production and agriculture's impact on the

environment (Viju and Kerr, 2011). The negotiations did not appear to go smoothly with a number of deadlines missed and, in the end, took slightly less than six years to reach a deal. While it could not be discerned whether agricultural issues were a major impediment to an agreement, issues such as Canadian recognition of EU geographical indications were difficult to resolve (Viju et al., 2013). Finally, the negotiators agreed to a text of the agreement and it was released for the first time in late September, 2014.

2. Agriculture in the CETA Agreement

2.1 Tariff Reduction

Existing favoured nation (MFN) tariffs notified to the WTO are to be reduced to zero in stages: Schedule A goods – immediately the agreement comes into force; Schedule B – four equal stages over 4 years; Schedule C – six equal stages over six years; Schedule D – eight equal stages over eight years; Schedule E – exempt from tariff reduction and; Schedule S – three equal stages commencing five years after the agreement comes into force (CETA Text, Trade in Goods, 2014).

Canada has published only a "Negative List" tariff schedule meaning that only those tariffs not on Schedule A are listed. The agricultural products on the negative list are largely those were the Canadian policy of supply management in place; i.e. dairy products, chicken, turkey and eggs. For these products, market access is regulated using TRQs so there are two tariffs that apply: (1) a lower within quota tariff that is applied to quota quantity imports and; (2) a much higher above quota tariff. The latter range between 150 and 350 percent with many near 250 percent. All of the above quota tariffs are listed as Schedule E – meaning no liberalization and no increased market access. Of course, market access for these products can also be liberalized through increases in the TRQ quota – this issue is dealt with below. For the within quota tariffs, they are listed as being on Schedule A meaning these tariffs will be eliminated once the agreement comes into force. Of course, eliminating within quota tariffs does not mean any increase in market access – it only means that the proportion of the rents available from the quota that accrued to the government through the collection of the tariffs are transferred to the holders of the quota rights, which are Canadian firms. Why the Canadian government would include this rent transfer in a trade agreement is unclear – maybe it gives the illusion of liberalization through

a reduction of tariffs that is useful in dealing with critics of the limited ambition of the agreement.

All other Canadian tariffs applied to agricultural products are on Schedule A and slated for immediate removal. This should lead to some improved access for EU agricultural products but Canada, which is on an export basis for most agricultural products, these tariffs tend to be low.

The EU's negative list shows a greater range of schedules. Tariffs on beef, pork and poultry products, as well as eggs are on Schedule E – meaning no additional market access. There is limited market access improvement for some beef and pork products administered under a TRQ which will be discussed below. In the case of beef, the absence of tariff reductions is not particularly important because Canadian beef imports into the EU are banned due to the widespread use of hormones in cattle production. The tariffs on pork and poultry are, however, limiting for pork and poultry products. Sheep and goat meat tariffs are on Schedule D and hence will be eliminated eight years after the agreement comes into force. These are minor export produces for Canada. Horsemeat (as well as meat of asses, mules and hinnies) is on Schedule B – elimination in four years. Some reindeer meet is also on Schedule B.

For a wide range of fruits and vegetables, where a combination of *ad valorem* and fixed rate tariffs apply, the *ad valorem* portion of the tariffs will be eliminated immediately upon the CETA coming into force, but the fixed rate tariffs will remain. Hence, the degree of liberalization for these products will have to be investigated on a case by case basis. The EU's fixed rate tariffs on durum wheat, barley, rye and oats will be eliminated according to Schedule D – the slowest tariff reduction schedule in the agreement. Sugar beets and beet sugar tariffs are also on Schedule D.

The general picture that emerges in terms of tariff reductions for agricultural goods is that for any major agricultural products with a potential to trade that are considered "sensitive" will continue to enjoy a considerable degree of protection. Even where tariff reductions are slated on such products, they are on the slowest schedule for reduction. Given that the agreement is unlikely to come into force until 2016 due to the ratification process, it will be a decade or more before tariff-free access is realized. For agriculture and food products where protection has not been important historically, tariffs will be removed relatively quickly. It should be pointed out,

however, that reduction in tariffs may not mean increased market access if quantitative restrictions or regulatory trade barriers are in place.

2.2 *Tariff Rate Quotas*

A number of Tariff Rate Quotas are specifically mentioned in the agreement. The EU quota on wheat will be increased by 100,000 metric tonnes for the first seven years of the agreement. The current quota is 38, 853 tonnes. All of this will be tariff free – again the reduction in this tariff will not improve market access. Given that total Canadian wheat exports averaged over 12 million tonnes annually in the decade ending in 2013 and EU production of wheat approximates 140 million tonnes annually, the increase in market access granted in the CETA is quite modest.

The EU TRQ quota on Sweetcorn – used for direct human consumption rather than as livestock feed - is slated to increase on a linear schedule to 8,000 tonnes in the sixth year of the agreement. These imports will not be subject to the within quota tariff. As pointed out above, eliminating the within quota tariff will not increase market access, only transfer part of the available quota rents from the EU treasury to those who hold quota rights. This increase in market access will, of course, only apply to corn not produced using biotechnology given the EU's zero tolerance policy for human food imports for such products (Hobbs et al., 2014).

A specific segment of the EU's TRQ for beef has been explicitly carved out for bison. The existing EU TRQ for beef can only be accessed by beef not produced using growth hormones. As Canadian beef producers use hormones that are banned in the EU, there is no beef available to fill the quota. Bison has no separate EU tariff line and, instead is classified as beef in the harmonized tariffs of the EU – presumably because their genetic makeup is similar to beef. Bison is not produced using growth hormones. Thus, it has been able to access the EU market through the beef TRQ.

With the expansion of the TRQ for beef in the CETA, along with some increased access received by Canada a few years ago as part of the settlement of the dispute with the EU over its import ban on beef produced using hormones, there may be an opportunity for some Canadian beef producers and their supply chains to produce and sell hormone-free beef into the EU. If this were to happen, it could threaten the existing market access enjoyed by bison. This threat to

bison's market access was pointed out in assessments of the potential impact of CETA on various agricultural sectors (Viju et al. 2010). Given that the EU has no domestic bison industry to protect, the suggested solution would be for Canada to press the EU in the negotiations for the creation of a separate tariff line for bison (Viju et al., 2010) – a feasible policy option (Loppacher and Kerr, 2005). Designating a specific segment of the beef TRQ for bison is an alternative. The bison portion of the TRQ is fixed at 3000 metric tonnes per year. Thus, no significant growth in bison exports to the EU can be expected to arise from the CETA. From a Canadian perspective this is a sub-optimal outcome compared with the creation of a new tariff line for bison whereby exports of bison to the EU would have been determined by market forces and growth of exports not capped.

There are separate EU TRQs for fresh (chilled) beef and frozen beef. Each is slated for staged increases over a six year phase in period. The annual quota on fresh beef will increase by 30,840 metric tonnes by the sixth year. In the case of frozen beef the additional quantity imported will increase by 15,000 metric tonnes in year six. Hence, beef exports could increase by approximately 46,000 tonnes once the agreement comes fully into effect. Annual Canadian beef production is, in contrast approximately 1.2 million metric tonnes and EU beef production 7.7 million tonnes. Hence, the increase in the beef TRQ is modest relative to both Canadian and EU production. Within quota tariffs will not be applied to either the currently existing quota quantities or the CETA additions to the quota.

As pointed out above, the increase in the quota will have to be filled by beef where hormones have not been used in production. The question yet to be answered is whether the total EU beef quota will be sufficient to induce some Canadian beef producers to foreswear the use of hormones – deceasing efficiency by approximately 10 percent. It will also require segregation of non-hormone beef throughout the supply chain. This means that slaughter and processing facilities will have to handle hormone-free animals and beef separately, either spatially or in time. Identity preservation systems will have to be implemented along the entire beef export supply chain. If this can be done profitably along the entire value chain, then exports to the EU may take place if quota can be secured. The EU will allocate the quota on an annual basis. If beef are to be produced without hormones the decision must be made when a calf is born – more than a year before exports of the meat from that calf will be exported. Thus, it cannot be known if

quota can be secured by a processor or exporting firm further down the supply chain at the point in time that the decision regarding hormone-free production must be made. Hence there is considerable risk in beef producers engaging in the production of hormone-free beef. If quota is not secured and the hormone-free beef has to be sold in the domestic market in Canada it will do so at a considerable cost disadvantage due to the reduced productivity of animals produced without hormones.

The EUs import ban on beef produced using growth hormones was declared inconsistent with its WTO commitments by a WTO Panel and the Panel ruled that the EU must open it market to US and Canadian beef. The EU chose not to comply with the Panel's ruling and accept retaliation as an alternative – as is its right under the rules of the WTO (Kerr and Hobbs, 2005). Canada (and the US) imposed retaliatory tariffs on imports of selected EU goods for nearly a decade. The US eventually reached agreement to end its retaliation in exchange for an increase in its allocation under the EU's fresh beef TRQ. Canada followed suite reaching a similar agreement with the EU. Canada was, at the time, seeking to initiate the CETA process with the EU. While Canada and the EU have reached a private solution to the question of retaliation, the WTO Panel ruling that the EU import ban is not in compliance with its WTO obligations still stands. Until the underlying cause of import restrictions on beef is resolved, the liberalization of beef imports achieved by Canada in the CETA can accrue to only a small segment of the beef industry – those that can successfully produce and export hormone-free beef to the EU market.

By the end of the six year transition period once the CETA comes into effect, Canada was able to secure a 75,000 metric tonne increase in the TRQ quota for pork. Given that Canadian pork exports are approximately 730,000 metric tonnes annually, the expansion represents a considerable gain of more than 10 percent of exports. There may, however, be EU SPS measures in place that continue to inhibit imports of pork from Canada (e.g. the EU ban on the growth promotant ractopamine which is in common use in Canada).

The Canadian dairy industry is domestically regulated through the policy known as supply management. This policy allows for the restriction of domestic output to increase the price received by farmers. The increased price in Canada leads to a divergence between the domestic price and the international price. As a result trade restrictions are required to maintain the price differential. Canada uses TRQs to restrict access to the Canadian market. The TRQ

policy encompasses all dairy products (as well as chicken, turkey and eggs). Specialty cheese imports are currently restricted to 20,411,866 kilograms. Sixty-six percent of this TRQ is currently allocated to the EU – i.e. 13,471,831 kg. Under the CETA the quota portion of the TRQ is set to rise in stages: by 2667 metric tonnes (year 1); 5333 mt (year 2); 8000 mt (year 3); 10667 mt (year 4); 13333 mt (year 5) to 16000 mt (in year 6 and all subsequent years), capping cheese imports from the EU as the above quota tariff is 250 percent. To limit the total expansion of the TRQ quota in the early years of transition, 800 metric tonnes will be transferred permanently from non-EU quota holders to EU quota holders in the first year. The 16000 mt means a more than doubling of the EU's quota (from 13,441 metric tonnes). Total EU imports can be 29,441,000 kgs per year once the phase in period is complete. Canadian consumption of cheese is approximately 425,000,000 kg per year. Hence, the EU quota will represent approximately seven percent of Canadian consumption under CETA. There is also a commitment for a small increase in the Canadian TRQ quota for industrial cheese – used in processed foods – of 1,700 metric tonnes by the end of the six year phase in period.

The agreement, in clause 20, provides detailed rules for re-allocating TRQ quota among quota holders to prevent underfilling of the quota quantities. Given that both Canada and the EU have only reluctantly given ground on increasing market access in products controlled by TRQs, closing off avenues for delay or failure to re-allocate unused portions of the annual quota allocation is an essential aspect of ensuring that the increased market access garnered in the negotiations actually takes place. There is also a provision in the case of the expansion of the TRQ quota that some of the additional allocation must be reserved for new entrants – firms that have not held cheese importing quota in the past. During the six year transition period, 30 percent of the additional quota is reserved for new entrants; after which 10 percent per year will be allocated to new entrants. Currently, all of the cheese import quota is allocated to existing holders of quota – there is no provision for new entrants wishing to import cheese. It is not clear why this provision is in the agreement. If EU firms were able to obtain quota rights, then it would mean that any quota rents available from the allocation would accrue to EU firms rather than Canadian firms. The new portion of the quota, however, is reserved for Canadian residents so EU firms capturing the some of the rents cannot be the motivation for the stipulation. Maybe the EU is hoping that new entrants will source European cheese from a different set of suppliers

than existing Canadian importers, thus spreading the benefits of the increase in market access more broadly. There is also, in clause 21, a provision for review of the operation of the TRQ quota allocation mechanism over the phase in period and at the end of the period.

2.3 Safeguard for Agricultural Products

Canada, but not the EU, is allowed to use of trade barriers justified under a "special safeguard" for some agricultural products. This is an anti-surge provision which can be used to limit over quota imports under Canada's TRQ system for dairy, poultry and eggs. It provides further support for Canada's domestic supply management policy and is consistent with Canada's WTO commitments.

2.4 Agricultural Subsidies

Provisions relating to subsidies are not normally included in preferential trade agreements because they generally affect all trading partners and, hence, are more appropriately dealt with at multilateral venues such as the WTO. The CETA has two brief references to agricultural subsidies – one for export subsidies and one for domestic support (subsidies). The provision on export subsidies is curious because it states that neither partner can put in place an export subsidy to offset the removal of an import tariff under CETA provisions. Of course, an export subsidy requires an import tariff to prevent arbitrage between the high domestic price that results from an export subsidy and the world price (Gaisford and Kerr, 2001). Thus, this clause is a *non-sequitur*. If this stipulation were included in the CETA provision on domestic support then it would limit the use of domestic subsidies to offset a reduction in import protection (Gaisford and Kerr, 2001). No such provision is included in the section on domestic support in the CETA.

2.5 Rules of Origin

To qualify as "wholly obtained" , and thus automatically exempt from the complex rules of origin provision of the CETA live animals must be born and raised in Canada or the EU. Further, this extends to "product obtained from live animals" or "products from slaughtered animals born and raised there" (CETA, Rules of Origin, Article 4). In the case of Canada, in particular, given the integrated nature of the livestock markets under the North American Free

Trade Agreement animals are often born in the US but either raised in Canada or imported for slaughter. Thus, to claim that meat was "wholly obtained" in Canada may require complicated record keeping and costly segregation in the supply chain – similar to the costs associated with US Country of Origin Provisions for Livestock Products (Sawka and Kerr, 2010). There are similar provisions for vegetable, plants and plant products which must have been harvested or gathered within the country to qualify.

In addition, some procession activities are not considered sufficient to allow rules of origin provision to be met. These include slaughtering of animals; the "husking, partial or total bleaching, polishing or glazing of cereals …" , and peeling, stoning and shelling of vegetables (CETA Text, Rules of Origin, Article 7, 2014). There are also complex rules of origin provisions for sugar embodied in processed foods (CETA Text, Rules of Origin, Article 16, 2014).

In general, the agricultural provisions of the CETA continue to reflect existing protectionist policies of both Canada and the EU. Where protectionism has not been a central pillar of domestic agricultural policy, liberalization has been included – primarily through tariff reduction. Thus, CETA incorporates elements of the "grand bargain" in agriculture whereby the ambition is mutually limited – Canada retains import restrictions to support its supply management policy and the EU retains its domestic system of regulation for biotechnology, hormone use in beef production and limitations on market access for wheat, beef and pork (Viju and Kerr, 2011). There is, of course, some limited increases in market access under TRQ quota expansions, but as indicated above, these are small and could be considered largely *window dressing* to improve public perceptions of the agreement. For example, while there was an increase in market access to the Canadian market for cheese in the CETA, none of Canada's extensive list of TRQs for other dairy products, poultry and eggs is even mentioned in the agreement. While the EU may not be internationally competitive in many of these products, there is little doubt that its suppliers would be competitive at supply managed prices in Canada. Thus, if the EU could have received access to additional quota under other TRQs in supply managed industries, its firms would have been able to expand exports to Canada.

Even in the case of cheese, the increased market access may not have a deleterious effect on the Canadian dairy industry because specialty European cheeses may not be close substitutes for domestic Canadian styles of cheese. As a result, the increased imports may simply expand the

consumption of cheese instead of replacing Canadian cheese with European cheese in the food baskets of consumers. Of course, this is an empirical question that can only answered with the passage of time.

Nowhere in the agreement is there any significant dismantling of protectionist measures in agriculture. Other provisions of the CETA may, however, have important implications for agricultural trade.

3. Additional Provisions of the CETA that Affect Agriculture

A number of provisions in the CETA that are not exclusively associated with agriculture and are encopassed under wines and spirits, intellectual property, sustainable development, trade and the environment and anti-dumping may have important ramifications for agricultural trade. Further, the extremely contentious issue of biotechnology has a special provision in the CETA.

3.1 Wines and Spirits

One long standing complaint of the European Union in its trade relations with Canada has been the conditions under which its wines and spirits are sold in Canada. The regulation of the sale of alcoholic beverages in Canada comes under the jurisdiction of provincial governments in the Canadian constitution. Historically, to discourage the consumption of alcohol as part of social policy and latterly as an important source of provincial government revenues, the sale of alcoholic beverages has been heavily regulated in Canada. In most provinces the retail sales of wines and spirits are sold either in government owned liquor stores or through government controlled liquor commissions. These government entities set very high mark-ups on wines and spirits that are reflected in the prices at which products are sold. This varies by province in that in some provinces retail prices are set directly by government entities while in others private liquor retailers must buy the product at prices that reflect the markup. The markups are at the discretion of the particular provincial authorities.

The EU has long contended that the markups applied to EU wines and spirits were discriminatory (Viju et al., 2010). In short, provincial liquor authorities price discriminated (more correctly markup discriminated) so as to extract the highest potential rents from the products they controlled. Given that EU products often have a premium quality image among consumers, their demand curves allow for larger markups to be applied relative to their

competitors. From a trade perspective, this appeared to violate non-discrimination provisions of the WTO and reduce market access for EU products. For the Canadian Federal Government, which is responsible for international trade, it has been an ongoing trade irritation where its ability to intervene is constrained by the constitutional division of powers.

When the potential for the CETA was being discussed the EU made it a condition for the negotiations to go ahead that the agreement would have to include aspects that dealt with issues that were under the jurisdiction of sub-national governments, including liquor authorities' markup policies. The other major issue where sub-national governments had jurisdiction was government procurement. As a result, the Canadian government had to convince provincial governments to support the CETA initiative and led to them "having a seat at the negotiating table".

The CETA text is very specific regarding the pricing and markups applied to wines and spirits originating in the EU. On pricing the agreement states:

> Competent authorities of the Parties shall ensure that any mark-up, cost of service or other pricing measure is non-discriminatory, applies to all retail sales, … (CETA Text, Initial Provisions and General Definitions, Amendments to Wines and Spirits, 2014);

where the competent authority is the liquor board or other provincial body with responsibility for pricing wines and spirits. And:

> Each Party shall ensure that a cost of service is not applied to products of the other Party on the basis of the value of the product (CETA Text, Initial Provisions and General Definitions, Amendments to Wines and Spirits, 2014);

where the cost of service is the markup. This clause is an attempt to ensure that the markup is a flat rate rather than a percentage of the price. The latter would place larger markups on high value EU wines and spirits. Further, the markups will be subject to an independent audit:

> The cost of service differential shall be justified in line with standard accounting procedures by independent auditors on the basis of an audit completed on request … (CETA Text, Initial Provisions and General Definitions, Amendments to Wines and Spirits, 2014).

These provisions are clearly designed to address the EU long running complaint related to its perception that markups were being used in a manner that discriminated against its wines

and spirits. There is one additional provision in the CETA regarding Canadian marketing practices for wine. In the provinces of Ontario and British Columbia, where most of Canada's wine production takes place, special wine outlets are licenced to sell only wines produced in the province. In other words they are prohibited from selling EU wines. Hence, EU wines are treated differently than Canadian wines – are denied National Treatment. In the CETA these types of retail wine outlets are capped – in essence it is a grandfathering provision but new stores of this type are prohibited. In regard to provincial regulations

> requiring off site private wine store outlets in Ontario and British Columbia to sell only wines produced by Canadian wineries. The number of these off site private wine store outlets authorised to sell only wines produced by Canadian wineries in these provinces shall not exceed 292 in Ontario and 60 in British Columbia (CETA Text, Initial Provisions and General Definitions, Amendments to Wines and Spirits, 2014).

On site retail outlets would be those located at wineries selling only their own wines. Taken together the provisions on wines and spirits are directly targeted at removing practices which discriminate against EU products. They represent a deep intrusion into the jurisdiction of Canadian provinces.

3.2 Geographical Indicators

The provisions of the CETA on geographical indicators come under its intellectual property provisions although the goods they relate to are agricultural products. Over the last decade the EU has given considerable emphasis to the establishment and promotion of geographical indications as part of it broader agricultural policy (Josling, 2006). Geographical indicators relate to products associated with a specific geographic area (e.g. the Bordeaux region of France) where aspects of a good's production originate. By having a geographic indicator recognized by the state through the granting of intellectual property rights, groups of farmers or artisans are endowed with monopoly powers to market products originating in the designated geographic area (Yeung and Kerr, 2011). The larger the market where the geographical indicator is recognized the larger the monopoly rents that can be garnered by the holders of the intellectual property rights (Giovannucci et al., 2009). One way to extend the market where a geographical indication is recognized is to have them accepted by trade partners in trade agreements (Kerr, 2006b). The EU has been aggressively pursuing the recognition of its geographical indications in

its preferential trade agreements including those with South Africa, Mexico and South Korea among others (Viju et al., 2013). Canadian recognition of EU geographical indications was, from the beginning, a major objective for the CETA from the European perspective (Viju et al., 2010).

In both Canada and the United States, there has been no specialized legislation – *sui generis* systems – to recognize geographical indications. Instead, similar protection for intellectual property is extended through trademarks. Some North American products where an EU geographical indication exits have been granted trademarks. Thus, there is a conflict of laws (Viju et al., 2013). More important, however, is the issue of generic terms. In Canada, terms such as feta are considered generic terms with no geographic exclusivity. Cheddar cheese is the same, and despite the existence of the British town of Cheddar is considered a generic term across the EU. A number of names of products considered generic in Canada, such as feta, are a designated geographical indicator in the EU. There are a number of Canadian producers of products such as feta cheese that would no longer be able to use the generic designation in their marketing if the EU geographical indication were to be recognized in the CETA – which could negatively impact their sales. Further, in Canada this complicated by the fact that many more recent geographical indications granted in the EU are artisan – human capital – based rather than *terrior* based with direct ties to soil and climate. In a country settled by immigrants who often have significant specialized human capital to contribute to their adopted economy, granting human capital based geographical indications seems a *non-sequitur* (Viju et al., 2013). To further complicate the negotiations, granting intellectual property rights to EU geographical indications in the CETA may bring Canada into conflict with its obligations regarding protection of intellectual property in the North American Free Trade Agreement (Viju et al., 2013). The negotiations over geographical indications were some of the most difficult in the CETA.

In the end the negotiators reached a classic compromise. Canada agreed to recognize an extensive list of EU geographical indicators – almost 175 products in all. The products include cheeses, processed meats, olives, olive oil, beer, baked goods, spices, vinegars, processed fruits and nuts among others. In the case of products currently considered generic and commercially produced in Canada, the compromise was to *grandfather* current firms in Canada producing these products. Five categories of cheese were the most important products where firms were grandfathered – Asiago, Feta, Fontina, Gorgonzola and Munster. Other grandfathered products

include Nürnberger Bratwürste, Jambon de Bayonne and Beaufort. No new Canadian firms will be able to market these products. Further, while Canada recognizes EU geographical indicators if existing Canadian trademarks use the same geographical name, the trademark is still protected. This means that both a trademarked products and a geographical indicator product can be in the Canadian market at the same time. This might lead to some confusion on the part of consumers.

Many of the non-dairy products bearing EU geographical indications will enter Canada under the new zero tariff rates. The will be able develop their markets without fear of Canadian competitors marketing similar products under the recognized geographical term. Of course, it does not mean that Canadian firms cannot produce similar products marketed under different names. For example, in a previous agreement between Canada and the EU, Canada recognized the EU geographical indicator Port. Previously port was considered a generic term in Canada and domestic product was marketed as port. Subsequently, at least one Canadian producer simply re-labled their product as Pipe which is sold in port style bottles next to Port in liquor outlets (Yeung and Kerr, 2011).

In the case of the cheeses granted recognition by Canada in the CETA they will still be subject to the quotas in the TRQs so market expansion will be limited. It may be that the premiums which the geographical indications can command from Canadian consumers might allow profitable exports after paying the high over quota tariffs of the TRQ system. Of course, Canadian supply management systems integrity is still protected through the existence of the agricultural safeguard available to Canada under the CETA which was discussed above.

The released CETA text lists no Canadian geographical indicators to be recognized by the EU. The text contains only an empty table where Canadian products could be listed.

3.3 Trade and Sustainable Development

Much was made of their being a section on trade and sustainable development in the lead up to the negotiations. Such a section was touted as being unique in trade agreements. In terms of agriculture there was some concern that it might contain elements that would allow the imposition of trade barriers when agricultural products were produced in ways that might be considered unsustainable (Viju et al., 2010). Given that there are differences in the regulation of agriculture between the EU and Canada – in part due to differences in population densities and

agronomic practices – what might be considered sustainable agriculture in one party to the agreement might be considered unsustainable in the other. In any case, these fears were unsubstantiated as the sustainable development section of the CETA stresses cooperation on sustainable development issues and opens channels for dialogue.

3.4 Trade and the Environment

Similar concerns to those expressed prior to the negotiations regarding the section of the CETA sustainable development were expressed for the section on trade and the environment (Viju et al., 2010). The EU had been unilaterally raising its environmental standards that relate to agricultural production. As a result, additional costs were being incurred by EU agricultural producers. In turn, this led to discussions of *leveling the playing field* through, among other things environmental tariffs. While such tariffs are not allowed by the WTO, there is no reason why they could not be included in agreements such as the CETA. There was a concern that once enshrined in a preferential trade agreement, they might be easily captured by vested interests seeking economic protection given the difficulty in assessing the equivalence of environmental standards for agricultural production (Kerr, 2010b).

The CETA text is silent on the issue of environmental tariffs. There are, however, two potentially worrying clauses for Canada in the CETA text on trade and the environment. These relate to the relationship to commitments under Multilateral Environmental Agreements. The two clauses are:

> Each Party reaffirms its commitment to effectively implement in its laws and practices, in its whole territory, the Multilateral Environmental Agreements to which it is a party (CETA Text, Trade and the Environment, 2014).

and:

> The Parties acknowledge their right to make full use of the General Exceptions in Chapter X (Exceptions) in relation to environmental measures, including those taken pursuant to Multilateral Environmental Agreements to which they are party (CETA Text, Trade and the Environment, 2014).

The concern relates to the international regulation of the products of agricultural biotechnology where Canada tends to disagree with the EU. Canada would prefer that any disputes be handled by the WTO according to WTO science-based principles (Viju et al, 2014).

Biotechnology is a difficult political issue in the EU and it has consistently argued that trade in the products of biotechnology should be governed not by the WTO but by the Cartagena Protocol on Biosafety (CPB) (Holtby et al., 2007; Smyth et al., 2013). It has been actively working to incorporate aspects of the CPB into its domestic regulatory regime for biotechnology. The BSP is seen as giving importing countries more powers to restrict imports than the WTO (Hobbs et al., 2005).

Canada is not a Party to the CPB. The CPB is a Multilateral Environmental Agreement. As the text above reads, the clauses do not refer to Multilateral Environmental Agreements that both Canada and the EU belong to. Only one party need belong to a Multilateral Environmental Agreement and the other Party agrees to respect the implementation of the *laws and practices* of that Multilateral Environmental Agreement. Exceptions claimed under the provisions of a Multilateral Environmental Agreement by the party to the Agreement must also be respected by the other Party. This could be interpreted that Canada has agreed to give up recourse to the WTO in matters covered by the CBP – in other words trade in the products of biotechnology. The interpretation of these clauses, one suspects, will have to be clarified in international law.

3.5 Anti-Dumping

Anti-dumping mechanisms are often viewed as primarily methods of providing protection to vested interests and, in particular, ill-suited to agriculture where, given commodity cycles, crop failures and animal diseases, it is a normal business practice to, at times, sell below full cost (Kerr, 2006). While the provision on anti-dumping in the CETA do not address these deficiencies but it does add an important Public Interest provision:

> The authorities shall consider information provided in accordance with their domestic law as to whether imposing an anti-dumping or countervailing duty would not be in the public interest (CETA Text, Trade Remedies, 2014).
>
> After considering this information, the authorities may consider whether the amount of the anti-dumping or countervailing duty to be imposed shall be the full margin of dumping or amount of subsidy or a lesser amount, in accordance with the domestic law of the Party (CETA Text, Trade Remedies, 2014).

Normally, anti-dumping provisions take no account of Public Interest when establishing the size the duties to be applied. In the case of agricultural goods anti-dumping duties increase food

prices. Increased in food prices for consumers is not generally considered to be in the public interest.

3.6 Trade in the Products of Agricultural Biotechnology

As suggested above trade in goods produced using agricultural biotechnology has been a long-running trade irritant in Canada's trade relations with the EU. Canada is a major developer agricultural biotechnology and producer of agricultural products using biotechnology. Genetically modified (GM) technology is used extensively in canola (oilseed rape), soybean and corn production. It is an exporter of GM products. The EU's regulatory regime for biotechnology is complex, slow, costly and lacks predictability. Trade restrictions are applied to products which have not been approved for production and/or import into the EU. Canada (along with other countries) have brought a case to the WTO regarding the EUs trade regime for GM agricultural products. It won the case in 2006 and the EU agreed to bring its regulatory regime into compliance with the WTO (Isaac and Kerr, 2003). The EU asked for time to make the required changes. After eight years there is considerable doubt that the new EU regime is WTO compliant (Viju et al., 2012), but this has yet to be tested by a dispute at the WTO. Further, Canadian exports of flax were significantly disrupted when traces of GM flax were found in the EU food system (Viju et al., 2014). The EU's zero tolerance policy on co-mingling of unapproved GM products in conventional shipments is, as a result, very contentious in Canada (Hobbs et al., 2014). The restrictive EU trade for GM agricultural products is also seen by Canada as inhibiting investment in the development of new GM crops (Smyth et al., 2011). For example, GM wheat has been withdrawn from development because of fears of the loss of the EU market for wheat. On the other hand, given the politically sensitive nature of agricultural biotechnology in the EU, the European Commission wishes to maximise its flexibility in dealing with issues that arise and, in particular, does not wish to be constrained by provisions of international trade agreements.

It is clear that Canada wanted the issues surrounding trade in the products of agricultural biotechnology on the negotiating agenda of the CETA, and the EU did not. Given that *everything was on the table* in the negotiations it could not be excluded from the agenda. The eventual compromise reached is classic one in negotiating strategy – don't deal with the issue. Instead, a venue for discussions on the issue has been agreed upon. Discussion forums for biotechnology

are mandated and a long list of topics of interest for Canada are specifically included. There is, however, no deadline for the resolution of any of the issues. It is a forum to *talk and talk* and nothing else. It is a solution that suits the European Commission as it effectively stifles any need to compromise on its trade regime for the products of biotechnology. This has to be seen as a victory for protectionist forces in the EU.

4. Conclusion

In the preamble to the Comprehensive Economic and Trade Agreement between the European Union and Canada the European Commission and the Government of Canada

> … resolve to CREATE an expanded and secure market for their goods and services through the reduction or elimination of barriers to trade and investment (CETA Text, Preamble, 2014).

In terms of trade in agri-food products examined in this paper the two governments have failed in their resolve. Most economies have aspects of their market that they heavily protect. This is true in the case of agriculture in both the EU and Canada. The sub-sectors of agriculture in each market that were heavily protected prior to the CETA remain heavily protected at the conclusion of the negotiations. No areas of substantial liberalization in agri-food trade are included in the text of the CETA. This result is not surprizing (Viju et al., 2010), although there may have been those who had expected something more substantial. The liberalization of agricultural trade is always difficult and was a major stumbling block in the Uruguay Round multilateral negotiations and continues as a major unresolved issue for the WTO's Doha Round. Substantial agricultural trade liberalization has seldom been manifest in preferential trade agreements. The latter runs counter to WTO commitments that preferential trade agreements should encompass *substantially all trade*. This commitment has never been tested at the WTO with regard to the absence of liberalization of agricultural trade. Hence, the CETA represents the norm for preferential trade agreement in its result for agri-food trade.

Having the negotiations take place under strict secrecy means that there is less opportunity to assess the potential agreement when the bargaining is ongoing. This is in contrast to the WTO negotiations where draft texts are public and areas where agreement has not been achieved are bracketed. As a result the CETA was presented to stakeholders in agriculture as a *done deal*. From the result, it is clear that protectionists were able the have their interests upheld.

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