Everything is on the Table: Agriculture in the Canada-EU Trade Agreement

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1.0 Introduction

According to Article XXIV of the General Agreement on Tariffs and Trade (GATT), preferential trade arrangements (custom unions (CU) and free trade areas (FTA)) are allowed by the World Trade Organization (WTO). The GATT requires that these agreements cover substantially all trade and that existing external tariffs should not be raised by the countries concluding the FTA. Article XXIV of GATT stipulates that:

"A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (…) are eliminated on substantially all the trade between the constituent territories in products originating in such territories." (WTO, n.d.)

Unfortunately, the prescriptions of Article XXIV requiring substantially all trade to be covered by an FTA have never been enforced – in fact, what substantially all trade means has never been defined.[1] As a result, many FTAs have often excluded sensitive sectors like agriculture, and the Agreements have still been accepted by the GATT. With an eye to Article XXIV Canada's Chief negotiator for the Canada-EU agreement, Steve Verheul, has stated that: "We have agreed from the start everything is on the table (Doyle, 2010)". Thus, one major objective of this paper is to assess whether the agricultural trade barriers that are entrenched on both sides of the Atlantic (Canada and the EU) will be tackled under the Canada-EU free trade negotiations, or whether they will be put aside for future WTO negotiations.

In October 2008, Prime Minister Harper of Canada and President Nicholas Sarkozy of France confirmed during the Canada-EU Summit that Canada and the EU would start to explore the possibility of a FTA. A few months later (May 2009) the launch of the negotiations for a Comprehensive Economic and Trade Agreement (CETA) was announced. The negotiations are slated to be a five-round process that it is expected to take two and a half years to complete. The first round of talks were held in October 2009, followed by further discussions in January, April and July 2010. The next round of talks are scheduled for October in Ottawa.

The concept of a FTA between Canada and the EU is not new but for many years the EU has rejected any initiative put forward by Canada to significantly deepen economic relations; leaving Canada as one of only eight countries without any form of preferential trade agreement with the EU (Maclaren, 2008). For example, the negotiations on a Trade and Investment Enhancement Agreement (TIEA) were looking very promising, but in 2006 the two parties jointly decided to *pause* the negotiations and no results have been forthcoming. This is troubling because, in 1976, Canada became the first industrialized non-European country that concluded a bilateral Framework

[1] Bhagwati (2008, p. 9-11), a critic of free trade agreements argues that the founders of the GATT thought that Article XXIV would only be used in rare circumstances because of the "substantially all trade" requirement.

Agreement for Commercial and Economic Cooperation with the EU. However, little has resulted from this cooperation agreement.[2]

In October 2008, Canada and the EU released a joint study *Assessing the Costs and Benefits of a Closer EU-Canada Economic Partnership* which outlines the economic benefits that could arise from closer economic integration, namely that GDP in Europe would increase by 0.08 percent and in Canada by 0.77 percent. This study is the source of the $12 billion estimated benefit to Canada that is often mentioned in news reports. Canada and the EU have agreed that the major areas for negotiation are: trade in goods and services, investment, government procurement, regulatory cooperation, intellectual property, temporary entry of business persons, competition policy, labour and environment (Joint Report on the EU-Canada Scoping Exercise). The attempt to create closer economic cooperation between Canada and the EU has been given a boost by three factors: 1) the glacial pace of the Doha Development Agenda at the WTO; 2) a fundamental shift in economic power towards Asia; and 3) Canada's status as an important energy producer with a stable democratic government. For Canada, a bilateral agreement with the EU would give it better access to 500 million consumers and help it to attract additional investment, technology and skilled workers from Europe. Some of the predictable sensitive issues that will challenge the CETA negotiations are agriculture, ship building, alcoholic beverages, trade remedies, health and safety standards, environmental regulations, intellectual property and government procurement. The market access negotiations in agriculture will also have to deal with a bewildering set of non-tariff barriers including packaging, labeling, certification (technical barriers to trade (TBT)) and health and safety standards (sanitary and phytosanitary standards (SPS)).

The remainder of the paper is organized as follows. Section 2 highlights the important characteristics of the agrifood sectors in Canada and the EU and the agricultural trade patterns between the two countries, while Section 3 describes the main trade barriers in agriculture. Section 4 analyses the interaction between the CETA negotiations and the Doha Round, while Section 5 outlines the main expectations regarding agriculture in CETA. Section 6 is focused on geographical indications (GIs) and their potential effects on agricultural producers and processors. The paper ends with a series of concluding remarks.

2.0 Canada and EU Trade and Investment

The economic relationship between Canada and the EU is characterized by strong two-way trade and investment. The EU represents Canada's second-largest trading partner, after the US, with exports to the EU valued at $52.2 billion and imports from the EU of $62.4 billion in 2008. However, Canada is only the EU's eleventh largest trading partner. The EU is the second largest source of foreign direct investment (FDI) in Canada

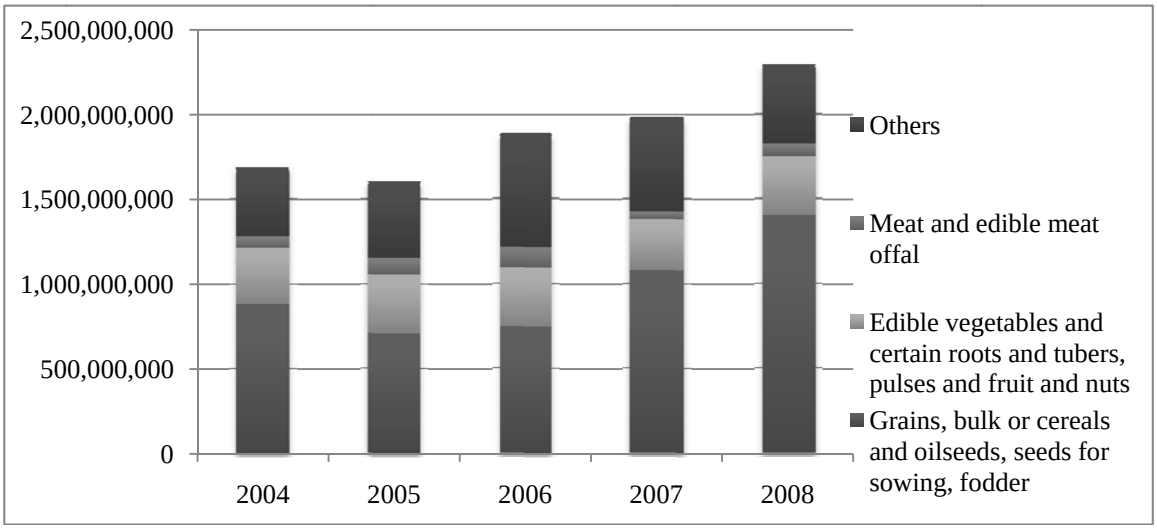
[2] Since 1976, Canada and the EU have concluded a number of limited bilateral agreements that cover various trade issues. These include agreements on cooperation between the EU and Canadian customs administrators (1997); a veterinary agreement (1999); a wine and spirits agreement (2003); and a comprehensive air services agreement (2009).

($133.1 billion in 2008) and Canada is the fourth largest source of FDI in the EU (21.4 percent of Canadian FDI abroad in 2007) (Foreign Affairs and International Trade Canada, 2009).

There is a considerable overlap in the product groups that the two parties trade with each other. The largest percentage of trade between the two countries is machinery and transport equipment. More than 60 percent of EU imports from Canada are manufactured products such as machinery, transport equipment and chemicals. Canada's main imports are transport equipment, crude materials and manufactured goods. Canada runs trade deficits with the EU in most industries, including agricultural products.

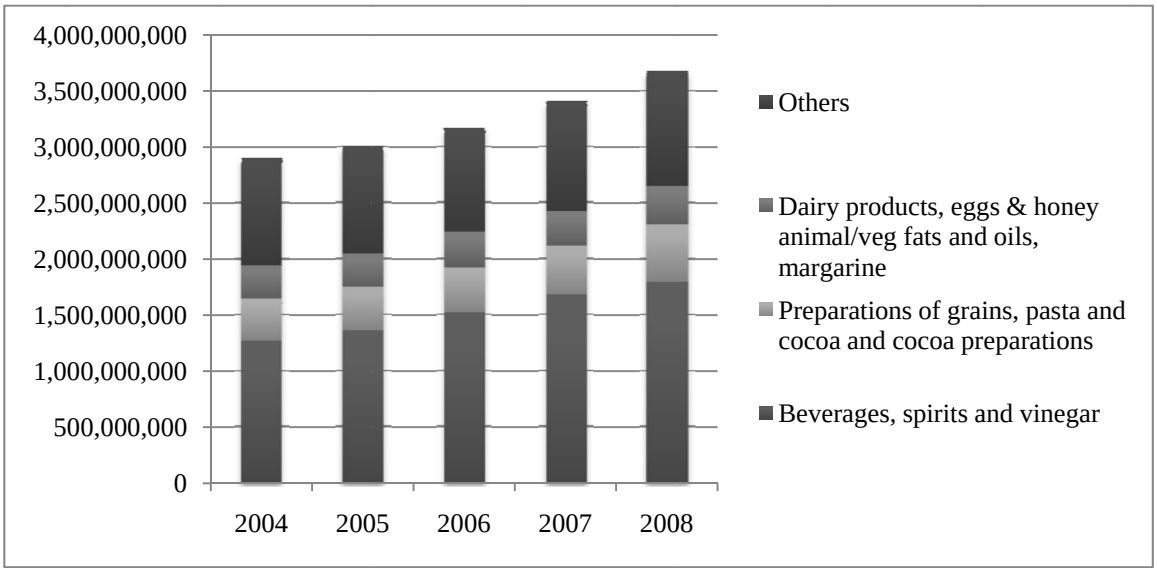
Agricultural products represent a major import/export sector for Canada (6% of exports, 2.5% of imports). A slight drop in agricultural exports to the EU in 2005 was followed by a continuous increase reaching $2.3 billion in 2008 (Figure 1). Canadian agricultural exports to the EU are mainly bulk commodities like grain and oilseeds. Canada's agricultural imports from the EU reached $3.7 billion in 2008 (Figure 2). The main agricultural imports from the EU are processed foods and alcoholic beverages. The EU has been a significant net agricultural exporter to Canada for many years.

Figure 1: Canadian agricultural exports to EU27 ($CAD)



Source: AAFC (2009)

Figure 2: Canadian agricultural imports from EU27 ($CAD)



Source: AAFC (2009)

Canada and the EU have a long history of supporting their agricultural sectors with government programs and policies and of protecting the sector from imports through tariffs and non-tariff barriers. Less clear is the role that standards and a variety of sanitary, phyto-sanitary and technical regulations play in providing protection to the sector.

Canada and the EU are major players in the international trade of agricultural products. The level of governmental support that agriculture benefits from in both countries shows the importance of the sector and also the power of the farm lobby. The government support goes hand-in-hand with a variety of protectionist measures that restrict trade and offer an advantage to domestic farmers. Thus, in the next section we outline the main barriers to agricultural trade.

3.0 Barriers to Agricultural Trade

The barriers to agricultural trade can be divided in four categories: tariffs, trade distorting subsidies, sanitary and phytosanitary (SPS) rules and technical barriers to trade (TBT) and standards.

In terms of tariffs, although both the EU and Canada have low *most-favoured-nation* (MFN) average tariffs on industrial goods (3.7 percent for Canada and 3.9 percent for the EU), food and agricultural products still face high tariffs. Overall, Canadian tariffs on imports from the EU have decreased on a trade weighted basis, but access to Canadian supply managed products such as dairy, eggs, turkey and chicken is highly restricted. These products are subject to tariff rate quotas (TRQs) with generally prohibitive over-

quota tariffs, in the range of 100 to 250 percent, and minimum access commitments ranging from 3 to 10 percent of consumption (Barichello et. al, 2005). Although EU tariffs on agricultural products were lowered during the Uruguay Round they are still high. In fact, agriculture is the only major product group that has tariffs in excess of 35 percent (54 percent for dairy products). The smaller fish, shrimp and sea food sector (where Canada is a significant exporter) is also heavily restricted by high tariffs and TRQs.

According to the OECD (2010) support and protection for the agricultural sector in Canada and the EU is near the OECD average of 21 percent of the value of farm output; 17 percent in Canada and 23 percent in the EU. However, the level of spending in the EU (US$120.8 billion) dwarfs Canada's (US$7.8 billion). Despite recent reforms a large percentage of the producer support is based on the level of output – it is *coupled* to annual production and/or prices.

Historically, the EU has been a major user of export subsidies but since 2000 their use has declined significantly to $1.3 billion in 2007/2008[3] (WTO, 2009). Canada only provides export subsidies ($90 million in 2008/09) to dairy products, while in 2007/08 more than one-half of the EU's export subsidies were for sugar (WTO, 2010). Of more concern to Canada are EU export subsidies for pork ($187 million) and beef ($47 million) and the fact there is no rule to prevent the EU from reintroducing them on a wide range of products.

Regulations have long been recognized for their potential to inhibit, restrict or eliminate trade in agriculture and food products in response to protectionist motivated lobbying of politicians. Traditionally, the lobbying for this form of protection has come from producers in import markets seeking relief from foreign competitors. In more recent times, particularly (but not exclusively) in the EU, the set of individuals and groups seeking regulatory trade barriers has expanded to include some consumers and environmentalists, among others (Isaac, 2007; Hobbs, 2007, Kerr, 2007). Controlling the use of regulatory barriers for protectionist reasons is complicated by the fact that the regulations often seemingly have a legitimate purpose. For example, governments have an obligation to protect their populations from food safety hazards no matter what their source – border regulations to reduce the risk of such hazards can clearly be legitimate. Similarly, governments have a duty to protect their citizens from fraud, including falsely labelled food products originating outside the country. Thus, the task of those negotiating trade agreements is to put in place systems that can accommodate legitimate regulatory barriers while restricting the use of such barriers for nefarious purposes – but this is not an easy task. In the Uruguay Round the rules on non-tariff barriers for trade in agricultural products were divided into two separate WTO sub-agreements. These are the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). The SPS agreement made science the justification for the imposition of these barriers (Isaac, 2007). There have been, however, some major disagreements between Canada and the European Union regarding the use of

[3] The original data are expressed in ECU: 849.9 million ECU for 2007/2008.

SPS measures since the agreement came into force. These disagreements relate to both the science itself and whether or not science should be the sole, or a contributing, factor in the establishment of SPS import regulations (Kerr, 2003). The TBT agreement deals with technical regulations that do not fall within the ambit of the SPS agreement. For food and agricultural products a contentious area is labelling requirements for imports. Over the last few years there has been a rise in consumers' interest in obtaining information regarding credence attributes of the goods in their markets – animal welfare, the use of child labour in production, the use of GMOs in production, whether crops were produced in an environmentally sustainable fashion, whether pesticides were used in production, etc. The TBT agreement is very clear, however, that import labels cannot be required on the basis of how a product is produced (e.g. in an animal welfare friendly manner) (Hobbs, 2007). Labels can be required only if the final product is discernibly different – a consumer, however, cannot determine by inspection if the meat they purchase was raised in an animal friendly way or not.

Differing product standards between countries can act as barriers to trade. For example, the EU requires that to be accepted as organic products in its markets, exporters must have a national standard for organic products and that standard must be acceptable to the EU – it does not mean that the standard must be harmonized with the EU standard (Sawyer et al., 2008). Until recently, Canada had no national organic standard and faced exclusion from the EU market. Canada did develop a national organic standard – but at a considerable cost. As trade in agrifood products is comprised of a rising proportion of processed foods, standards become increasingly important in the governance of trade.

4.0 Interaction with the Doha Round of WTO Negotiations

The negotiations for the CETA were announced after the Doha Round of multilateral trade negotiations was officially suspended in 2008; although considerable *technical* work has continued in Geneva. The long and inconclusive multilateral trade negotiations have resulted in an increased interest in regional trade agreements. Nonetheless, an important question is what can be achieved in a Canada-EU bilateral agreement that would not jeopardize the position of the two parties in relation to their positions in the Doha Round. Agriculture has been one of the most difficult facets of the multilateral negotiations and represents one of the most sensitive sectors for both countries. It is easy to be pessimistic about what can be accomplished in agriculture in the CETA but it is important to recall that the Canada-United States Free Trade Agreement (CUSTA) was negotiated under exactly the same circumstances – during a long pause in the Uruguay Round negotiations. From a Canadian perspective the CETA negotiations do not raise the spectre of cultural and economic domination that the CUSTA negotiations did – which should make the final result easier to sell.

This paper is not the place to provide a detailed appraisal of the Doha Development Agenda and its importance to Canadian agriculture; Gifford, McCalla and Meilke (2008a, 2008b) have already done this. Blustein (2009) provides an entertaining, in-depth and yet non-technical description of the negotiating process, issues and difficulties of the Doha Round. Although the Doha Round negotiations and its modalities

are complex the elements essential to this discussion can be summarized as (WTO, 2008):

- The elimination of export subsidies by 2013;
- An average reduction in tariffs of 54 percent in developed countries and 36 percent in developing countries using a four tiered formula that cuts the highest tariffs the most;
- The identification of a limited number of *special* (available only to developing countries) and *sensitive* (available to both developing and developed countries) products that will face smaller tariff reductions;
- A significant reduction in the ceiling level for expenditures on trade distorting domestic support using a three tiered formula that cuts ceiling levels the most in the European Union, the United States and Japan; and
- The creation of a special safeguard mechanism to protect developing countries from import surges or sharp drops in import prices (Grant and Meilke, 2009).

Clearly, if the Doha Round had been concluded successfully the CETA negotiations would be easier: export subsidies would have been eliminated; sensitive products would have been clearly identified; and, initial tariff levels would have been lower. Still, if the CETA negotiations are successful Canada will enjoy a larger degree of tariff preference in the absence of a Doha Round agreement. At this point, the question is whether all of the relevant Doha Round issues can be addressed successfully in a bilateral agreement between Canada and the EU even though officially everything is on the table.

5.0 Realistic Expectations for Agriculture

In accessing the gains, in agriculture, from trade liberalization with the EU there are two potential drivers: 1) gains from less competition in third country markets; and 2) gains from increased bilateral trade resulting from lower tariffs and from removing regulatory barriers to trade.

Unfortunately, EU subsidies – both direct export subsidies and domestic subsidies that have trade distorting effects on EU production – that negatively impact the profitability of Canadian sales in *third markets* cannot be dealt with on a bilateral basis.[4] These distortionary policies have to be dealt with at the multilateral level – there is no way to isolate Canadian *third market* exports from the effects of these market distortions. Thus, much of what Canada might have to gain from changes in EU agricultural policy is simply not an appropriate topic for bilateral negotiation. It does help that as a result of CAP reform the EU has already scaled back its use of export subsidies on many of the products that compete with Canadian products in international markets.

[4] Canada will insist that export subsidies not be used on EU shipments to Canada.

The second major area of Canada-EU market distortions in agriculture is barriers to market access. Both the EU and Canada have sectors with significant barriers to market access that negatively impact the exports of the other party in the bilateral discussions. Unlike subsidies, barriers to market access can be dealt with effectively in bilateral trade agreements. Barriers to market access, however, are not homogeneous with regard to the motivation for their imposition. Some tariff impediments faced by Canadian products attempting to enter the EU market are required to maintain the integrity of the remaining EU export subsidies – export subsidies raise producer prices in the importing country above world market prices and, thus, to prevent consumers from taking advantage of lower world prices, barriers to market access are required (Gaisford and Kerr, 2001). Thus, lowering barriers to market access in these situations will first require that the question of export subsidies be effectively dealt with multilaterally at the WTO. There are, however, some areas where increased market access might be achieved even in the case of export-subsidy motivated tariffs. For example, the EU import tariff on beef is in the 50 percent range. One product that is negatively impacted by this tariff is Canadian bison meat. This is because the EU has no separate tariff line for bison – bison, presumably due to its genetic *closeness* to beef, is classified as beef for EU tariff purposes. This very large tariff has hindered the development of the market for Canadian bison in the EU (Hobbs et al., 2000). Canada could seek agreement that the EU would create a new tariff line (Loppacher and Kerr, 2005) for bison meat. After all, there is no export subsidy regime for bison in the EU; in fact there is no bison industry. With no protectionist *vested interests* in the EU, this may be an area where Canada might obtain concessions relatively easily. While the bison industry is not large, it is one that Canadian governments have been trying to foster as part of their diversification efforts in western Canada (Hobbs and Kerr, 2000). A significant opening of the EU market could give a considerable boost to the industry. There may be other niche market products that are caught in inappropriate tariff or regulatory regimes that are, as yet, not of sufficient importance to garner any official action from EU bureaucrats. Creating a *fast track* mechanism to handle tariff anomalies, regulatory vacuums and bureaucratic inertia within the Canada-EU agreement might yield considerable benefits for future industries – where vested interests do not (yet) exist in the EU.

While the 50 percent tariff on beef is sufficient to exclude Canadian beef from the EU market, beef represents a clear example of layered barriers to trade. Even if the high EU tariff on beef could be removed, movements of beef into the EU market would still be prohibited. This is because of the EU ban on imports of beef produced using growth hormones – note it was only a few beef products (largely offal), whose tariff lines were not subject to the high beef tariffs, that were affected by the hormone-based ban (Kerr and Hobbs, 2005). After all, the WTO only authorized $11 million annually in compensation payments/retaliation for Canada. Thus, removing one layer of market access restriction will only lead to another binding constraint.

Beef can be produced without the use of hormones in Canada. Thus, it may be possible to profitably supply hormone free beef to the EU. The large EU tariff on beef, however, has prohibited the development of this form of beef production in Canada. The EU does, however, allow limited quantities of beef to be imported without the tariff being

applied. This limited access in known as the *Hilton Quota*. The US recently gained an expansion in its Hilton Quota as a result of bilateral negotiations with the EU. As part of the CETA, Canada could negotiate an increase in its allotment of Hilton quota. The increase would have to be of sufficient size to justify the establishment of hormone-free beef production in Canada and the co-requisite of a segregated supply chain for hormone-free beef. If this degree of increase in market access could be secured in the negotiations it would be an important facet of the agreement.

The case of beef produced using hormones is only the *tip of the iceberg* for a significant issue pertaining to market access to the EU. This is the problem the EU has in dealing with consumers, environmentalists and others requesting barriers to market access. The WTO's trade architecture only recognizes the right of governments to respond to producers asking for protection (Kerr, 2010). In recent years, however, consumers, environmentalists and others have been asking – sometimes forcefully demanding – that the EU Commission impose trade barriers on a variety of products. Often, these products can originate in Canada. For example, some consumers in the EU have been advocating an import ban on seal pelts from Canada and have been sufficiently persuasive to have the European Parliament legislate a limit on imports. As discussed above, consumers in the EU were successful in having imports of beef produced using growth hormones banned – and in having the EU Commission accept retaliation rather than complying with a WTO disputes Panel ruling. The latter, while within the EU's rights under the WTO, is an unprecedented action.

Environmentalists and some consumers in the EU have been vociferous in their opposition to imports of agricultural products produced using modern biotechnology – genetic modification. Green labelling, leg-hold traps, organic standards, animal welfare and a wide range of other issues have led to calls for restrictions on imports. In the absence of any direct provisions in the WTO to deal with such requests for protection, the EU has resorted to, at least from the Canadian viewpoint, the nefarious use of SPS measures. In an attempt to *de-politicize* the imposition of SPS-based barriers, the WTO's SPS agreement enshrined science as the basis for imposition of trade barriers. Agreement on how to operationalize science-based decision making has, however, proved elusive – with the US and Canada (among others) on one side of the debate and the EU (among others) on the other (Isaac and Kerr, 2007). Canadian genetically modified canola has been a major casualty of this disagreement but wider adoption of GM technology – where Canada is recognized as a world leader – has been inhibited and research on GM-crops slowed due to market access issues in the EU. There has been similar pressure by consumer groups and others over TBT issues such as animal welfare, green labeling, etc. but, thus far, EU decisions makers have been less inclined to acquiesce to these protectionist requests – but the pressure is intense and, hence, it will be difficult to negotiate reductions in current barriers. In any case, bilateral exceptions could not be made for Canadian products under the SPS or TBT because other countries could claim discrimination – and the SPS and TBT agreements are founded on the principle of non-discrimination (Isaac et al., 2002). Consumer angst in the EU over GM foods, hormones, animal welfare etc. shows no signs of abating and the issue of how to deal with non-producer groups' requests for protection remains *off the negotiating table* at the WTO;

while this issue will be on the negotiating table in the CETA talks, making progress in a bilateral forum seems challenging.

Another area where the question of market access is muddled is biofuels. The EU has put considerable resources into fostering biofuel production, particularly biodiesel. Imports would threaten the sustainability of that effort as well as the incomes of farmers that have responded to the incentive. Hence, while trade in biodiesel is considered a non-agricultural market access issue, it could have ramifications for the agricultural sector in Europe, and over the longer run in Canada if non-food based biofuels technology becomes commercially viable.[5] Given the current vested interests in the EU, however, the prospect of garnering significant progress on market access in this area in the Canada-EU agreement appears problematic at best.

The EU will also be looking for market access opportunities in Canada. The opportunities for EU agriculture and food exporters probably lie where Canadian trade barriers are the highest – and where Canadian opposition to trade liberalization is the most vociferous – those areas where supply management is the Canadian domestic policy. Access to poultry markets is unlikely to be a major area of interest for the EU – although there might be some niches where specialty products could benefit from lower barriers to access. Dairy products are where the EU would like to gain better market access – in particular specialty cheeses. The EU has long chafed under high tariffs and other market access restrictions for their differentiated cheeses. The Canadian pallet continues to mature in this area as the population becomes more wealthy and diverse. It is a complement to the expansion of consumption of better quality wines. The EU can see opportunities for market growth in the dairy sector. Resistance to increasing market access is, however, strident among Canadian dairy producers. They have successfully defended supply management in other bilateral negotiations like the Canada-US Free Trade Agreement (CUSTA) and the North American Free Trade Agreement (NAFTA) as well as during the Uruguay Round and the current Doha Round (Barichello et al., 2007). Any concessions on market access in the Canada-EU agreement would be viewed as the *thin edge of the wedge* by supply management advocates. Given the political sensitivity of the issue in Quebec and the oft-demonstrated effectiveness of the Canadian dairy lobby (Skogstad, 2008), market access for dairy products is likely to reflect the institutional *status quo* – in other words the survival of supply management will not be threatened by whatever is agreed in the CETA. This does not mean, however, that some increase in the minimum access commitments for some EU products could not be negotiated. This might require some modest adjustments in the supply managed sectors.

The EU also wants better market access for its wines. The main barrier, however, is the purchasing/sales practices of monopsonistic/monopolistic provincial government

[5] Ethanol is currently considered an agricultural product for international trade purposes. In the wake of the rapid increase in food prices in 2008, which has been attributed, in part, to food products such as corn being drawn into ethanol production, there has been a major shift in emphasis toward non-food inputs for making ethanol – particularly those based on forest products and the bi-products of other industries. It is not clear as to whether ethanol produced from these non-food competing inputs would be considered agricultural or industrial products for the purposes of international trade.

liquor boards in some Canadian provinces. Of course, this enters the realm of constitutional division of powers in Canada – and may not be where the Canadian government wants to go in the context of an agreement with the EU although it was stick handled in the CUSTA.

We believe there is the making of a grand bargain in agriculture – don't you push for broad-based market access into the EU and we won't push for broad-based market access in Canada. There does not seem to be compelling pressure from outside the sector in either country to trade off market access in agriculture to obtain something in services or manufacturing – so the grand bargain is likely to stay within agriculture and any gains in market access are likely product specific and relatively limited.

The negotiators have agreed that *trade and the environment* will be directly included in the agreement – something that needs to be carefully assessed. In the NAFTA, for example, trade and the environment issues were isolated in a side agreement. At the WTO, trade and environment issues are dealt with in the Committee on Trade and the Environment but little or no progress has been made in the Committee in over a decade. One suspects that the EU would like *trade and the environment* issues included directly in the CETA, at least in part for the precedent that it would set. For example, it has been a supporter of the Biosafety Protocol – an alternative set of rules for trade in genetically modified products. One of the reasons for this is that the EU has long chafed under the WTO rules pertaining to the *precautionary principle*. The *precautionary principle* has been one of the mantras of the environmental movement because they see it as an effective protectionist mechanism – and given there is no internationally agreed way to operationalize the *precautionary principle* for decision-marking purposes it is at this time wide open to protectionist abuse (Holtby et al, 2007; Phillips et al., 2006). Canadian negotiators need to be particularly vigilant in ensuring that no reference to the *precautionary principle* as interpreted by the EU be included in a section on *trade and the environment* – beyond what is already agreed in the WTO.[6] Allowing trade barriers to be put in place for environmental reasons by the EU under its understanding of the precautionary principle could be devastating for future Canadian agricultural exports – in particular any products using new, transformative technologies such as, but not restricted to, agricultural biotechnology.

Another concern with including *trade and the environment* directly in the Canada-EU agreement relates to environmental tariffs or border taxes.[7] This is an issue that is relevant to trade in both manufacturing and agricultural products. Environmental tariffs

[6]Of course, the *precautionary principle* is also accepted in Canada. There are, however, major differences in how the *principle* is interpreted and operationalized in Canada and the EU. See Isaac, (2007) , Hobbs et al. (2005) and Holtby et al. (2007) for discussions of different approached to the *precautionary principle* in North America and the EU. The EU interpretation is much more protectionist.

[7]The terms Border Tax Adjustments (BTAs), Border Carbon Adjustments (BCAs) or Border Tax Measures (BTMs) are used to describe largely the same thing: border measures imposed on imports from countries with less strict environmental policy. The measures include a flat tariff, a tax or a requirement for the importer to purchase carbon credits. Even the terms environmental/carbon tariff or carbon border tax are easier to understand, the words tariff or tax are not compatible with the WTO (ICTSD, 2009).

would be used to penalize the export of products that are deemed to have been produced under less strict (less costly) environmental regulations. Beyond the important question of whether environmental tariffs can be justified on theoretical grounds, the practical questions of how such a regime would be structured suggest that this should be a *no go* area for negotiations. As environmental science is far from fully developed, ascertaining when environmental regulations are less strict (or less costly) in particular environmental situations will be fraught with difficulties – and disagreement. It is easy to imagine an institutional mechanism similar to that which exists in dumping – and indeed some people refer to exports under *less strict* environmental regulations as *environmental dumping* – which is generally agreed to be wide open to protectionist abuse, if not captured (Kerr, 2006b).

A mechanism to deal with *environmental dumping* similar to the current anti-dumping mechanism being included in Canada-EU agreement could be very detrimental to Canadian exports to the EU. Given that environmental regulations in Canada and the EU have developed separately, there are considerable differences between jurisdictions. Thus, many Canadian exports might face challenges from EU producers on the basis of *environmental dumping*. Clearly, there needs to be detailed attention given to the potential impact on Canadian agriculture of any environmental section included in the CETA.

6.0 Geographical Indications

Geographical indications (GIs) are a form of intellectual property. They require protection from the state because they represent goods where value is derived from *credence attributes*. Credence attributes are those that consumers cannot identify even after the product is consumed. Unlike *search attributes* that can be identified by consumers prior to purchase (e.g. the colour of a shirt) and *experience attributes* that can be identified through consumption (e.g. the tenderness of a lamb chop), credence attributes cannot be directly discerned by the consumer (e.g. whether the fortified red wine they just consumed was produced in Porto Portugal) (Hobbs, 1996). Originally, geographical indications were based on the idea of *terroir* whereby the value of the product was derived directly from something associated with the physical attributes of the soil and/or water (possibly in interaction with climate or other natural phenomenon) that were unique to a specific geographic location. Thus, it may be possible for a *wine expert* to identify whether a particular sparkling wine came from the Champagne region of France, but the pallets of the vast majority of consumers are not sufficiently sophisticated to make that distinction. Hence, there needs to be a signal for consumers that the product did, indeed, come from the Champagne region of France – normally the signalling device is the label. As most consumers cannot distinguish the origin of the product, however, they need to be assured that the label provides accurate information – to prevent products being *passed off* as originating from Champagne when they did not. If consumers could directly identify a product's true geographic origin through inspection or consumption then they would not be fooled by those attempting to *pass off* their products as the genuine product – in the case of identifying the *terroir* through consumption, presumably the consumer would only be fooled once; which is not a sustainable business proposition

for those attempting to *pass off* their products. As the valuable attributes are credence in nature, GIs have been provided with the protection of the state by giving them intellectual property status.

In international trade law, GIs come under the World Trade Organization's Agreement on Trade Related Aspects of Intellectual Property (TRIPS). The EU has been attempting to strengthen the international protection of intellectual property both at the WTO and in preferential trade agreements (Kerr, 2006a). The major reason for this push to have protection for GIs strengthened is that, in the wake of CAP reforms that have limited avenues for the distribution of subsidies, the granting of GI status has become an important facet of EU agricultural policy (Josling, 2006). The EU currently has about 5000 products that have a GI designation and new registrations continue – with 300 products in process (Yeung and Kerr, 2008). The granting of intellectual property rights through the official recognition of a GI endows the owners of these rights a monopoly which they can exploit – to raise the incomes of the groups of farmers (or others) that enjoy the rights. Thus, government support for farmers who have been endowed with a GI is expected to arise from monopoly rents rather than taxpayer financed subsidies.

The development of EU GI policy has expanded the set of characteristics of products that can be granted GI designation beyond those associated with *terroir* to include localized human capital-based knowledge such as artisan cheese production or meat curing. While the set of attributes has been expanded, they share with *terroir* attributes with credence properties. A consumer cannot tell whether cheese labelled as Feta was produced in Greece (which has been endowed with that particular GI) or, for example, Denmark.

As agricultural policy has become more oriented toward GIs, the EU has become increasingly interested in garnering additional protection for their GIs in foreign markets (Kerr, 2006a). If foreign governments can be convinced to enforce GIs granted in the EU then monopoly rents accruing to the rights holders should increase, thus assisting in raising the incomes of agricultural producers (and/or others) in the EU and contributing to a range of rural policy objectives. There are three contentious international issues pertaining to GIs: 1) a major global split in the mechanism used to protect this particular form of intellectual property; 2) the treatment of some products that have been granted GI status in the EU as *generic* terms in some other countries – meaning that they are considered common terms and not identified with production being undertaken in a particular geographic local (e.g. Feta cheese in Canada); and 3) garnering foreign protection for less well known or new EU GI designations.

The two major legal instruments used to protect this form of intellectual property are *sui generis* (or special specific legal) systems to protect GIs and (often collective) trademarks. *Sui generis* systems are used by approximately 100 countries – including the 27 member states of the EU – while 50-odd countries, including the US and Canada, use trademarks (Giovannucci et al., 2009). Although lawyers argue about subtle differences between the two systems for protecting this particular type of intellectual property, the reality is that either system can be effective. Two competing systems, of course, add costs

for those attempting to have global protection for their GIs. No matter which system is currently in use, governments and the owners of intellectual property rights have invested heavily in the system so that *switching costs* are potentially very high. Thus, there is little chance of a country currently using a trademark system switching to a *sui generis* system. Problems do arise, however, when a GI has been granted, for example, under a *sui generis* system in one country but has been granted a trademark in another country. One very contentious example is *Parma* ham which has an EU GI but the name is trademarked in Canada by a large meat producer. The EU would like to have its GI recognized in Canada – and, hence, capture the monopoly rents associated with Parma ham. Of course, the Canadian firm that owns the trademark has invested heavily in brand development and, in any case, is loath to give up those same monopoly rents. This is simply an argument over monopoly rents – and should be seen as nothing more.

The issue of generic terms is something different. One obvious example of a generic term is cheddar cheese. There is a town in England named Cheddar where the term originated. Cheddar cheese, however, is made in many countries and denotes a style of cheese – there is no association with Cheddar in England and, in fact, the geographic association is of such little value that there are no major cheese producers in or near the town of Cheddar (Kerr, 2006a). In many countries the term Port denotes a style of fortified red wine rather than being exclusively associated with a particular region of Portugal. Depending on the country, other examples of products that carry an EU GI that are considered generic are Feta cheese, Champagne, Bordeaux wine and Madeira. These products are produced in countries where the term is considered generic. The terms are well known so considerable monopoly rents may be available if the rights for exclusive use of the names could be acquired through the recognition of a foreign GI. The process of obtaining recognition of a GI for a product considered generic is known as *clawback*. Under the WTO, countries are allowed to designate which terms they consider to be generic. The EU has been actively attempting to have the WTO rules on GIs strengthened – without much success (Kerr, 2006a) – and very active in *clawing back* well known GIs in their preferential trade agreements (Yeung and Kerr, 2008). Some GIs were *clawed back* in the Canada-EU wines and spirits agreement and a broader range of products may be of interest in the current negotiations.

Obtaining recognition for less well known or new GIs in a foreign country is known as a *greenfield* process (Yeung and Kerr, 2008). The EU would like to obtain direct recognition of their GIs by foreign countries primarily to save their individual GI rights holders the costs associated with foreign registration procedures, whether for trademarks or the *sui generis* systems of other countries (Giovannucci et al., 2009). What is usually proposed is reciprocity in recognitions, thus providing mutual saving of the registration costs.

The European Union position on GIs in the negotiations has not been made public. One might, however, gain some insights regarding what GIs they might want Canada to protect from other EU requests pertaining to GIs. At the WTO Cancun Summit in 2003, the EU brought forth a list of Geographical Indicationsors for which it sought protection. At that time it was suggested that the EU was likely to demand that list,

comprising 40 products, be accepted by WTO members as non-generic, protected terms as part of the *market access* package for the Doha Round (USDA, 2003). The wines and spirits for which the EU was seeking enhanced GI protection at the WTO in 2003 are presented in the left hand column of Table 1.

Table 1: Wine and Spirit Designation Protection Sought by the EU

Provided to WTO Members, 2003[8]	Canada-EU Agreement[9]
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

[8] USDA Foreign Agricultural Service, "EU releases final list of Geographical Indicators for Cancun 2003" .
[9] EU-Canada Wine and Spirits Agreement to end generic use of European names.

A total of 22 wines and spirits were on the EU's wish list. The Canada-EU Wines and Spirits agreement eliminated the generic classification of 21 EU wine names in Canada. These are listed in the right hand column of Table 1. The Agreement was designed with a three-phased termination of generic status for the affected wine names: Chablis, Champagne, Port/Porto and Sherry designations by December 31, 2013; Bourgogne/Burgundy, Rhin/Rhine, Sauterne/Sauternes by December 31, 2008 and Bordeaux, Chanti, Claret, Madeira, Malaga, Marsala, Medoc/Médoc, and Mosel/Moselle immediately upon entry into force of the agreement.[10] The agreement further stipulates production and quality standards for wines and spirits in bilateral commerce. Moreover, an end to the generic status of Grappa and Ouzo spirits was agreed, with the phase out to be complete within two years of the entry into force of the agreement.[11] In return for Canadian protection of their designated wines and spirits, the EU will protect Rye Whisky as a distinctive product of Canada.

Clearly, there is a considerable overlap in the two lists.[12] In summary, the EU sought recognition at the WTO 2003 Cancun summit for the following wine and spirits designations ***not*** covered by the Canada-EU Agreement: 1) Beaujolais, 2) Burgundy (though an alternative spelling, Bourgogne, was covered by the Canada-EU Agreement); 3) Cognac; 4) Graves; 5) Liebfrau(en)milch; 6) Rioja; 7) Saint-Emilion; and 8) Jerez, Xerez. Thus, it may be that in the current negotiations the EU would like to extend the list of wines and spirits that Canada would agree to protect to its entire 2003 list. With some major products such as Port, Sherry, Chianti and Chablis covered by the Wines and Spirits Agreement, and extension to cover the remaining products on the EU's 2003 list would not seem likely to act as a great constraint to Canadian grape and wine producers.

The products on the list the EU suggested to the Members of the WTO in 2003 that were not classified as wines and spirits are listed in Table 2.

[10] EU-Canada Wine and Spirits Agreement to end generic use of European names
[11] EU-Canada Wine and Spirits Agreement to end generic use of European names
[12] Please note that in the 2003 document, there is reference made that *Sherry* in preceding documents now is known by its Spanish name "Jerez" or "Xerez". Also, the Canada-EU agreement includes both the English and original-language names of wines and spirits, where applicable, such as *Bourgogne/Burgundy*, *Medoc/Médoc*, *Port/Porto*, *Rhin/Rhine*, and *Sauterne/Sauternes*. The EU's Cancun wishlist seems only to include the original-language name of the wine or spirit (i.e. *Bourgogne*, *Médoc*, *Porto*, *Rhin*, *Sauternes*)

Table 2: 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

Most of the products on the non-wine and spirits list the EU presented to WTO members in 2003 are either cheeses or cured meat. Of the cheeses on the EU list, Parmesan cheese is produced by large producers in Canada such as Kraft and Saputo. The monthly production of Parmesan cheese in Canada ranged from 605 tonnes in January 2003 to 585 tonnes in December 2009 (Statistics Canada, 2010). Feta cheese is also produced in considerable quantities by a range of large and medium sized producers. According to Statistics Canada monthly production of Feta cheese in Canada ranged between 142 tonnes and 449 tonnes between January 2003 and December 2009. Just to put the production of Feta cheese in perspective, monthly Cheddar cheese production ranged between 9,017 and 13,193 tonnes. The only other specialty cheese on the EU list that we have been able to identify as being produced in Canada is Asiago. There may be small scale/artisan Canadian production of some of the other cheeses on the EU list, but we have not been able to identify them. It is also not clear whether the EU which has given GI protection to Mozzarella di Bufala Campana would want to claw back the broader term Mozzarella. Of course, Mozzarella cheese is produced in Canada (10,118 tonnes in December 2009).

There is likely to be considerable resistance by large and medium sized cheese producers to allowing the clawback of Parmesan, Feta and (possibly) Mozzarella. Of course, if protection of the EU GI were to be granted to these products it would not mean that Canadian firms would have to cease production of the product – they would only have to cease labelling and marketing their products as Parmesan, Feta or Mozzarella. In the wines and spirits industry where clawbacks have taken place, clever marketing has meant that the same product has been successfully marketed in ways that do not encroach on the GI's legal protection (e.g. Port now being marketed as Pipe) (Yeung and Kerr, 2008). Beyond the rents associated with clawbacks, there is a broader question of Canada granting protection for EU GI cheeses that are not yet produced in Canada. Given that cheese imports are considerably constrained due to the protection provided for the supply management system for dairy, both Canadian consumers and Canadian dairy producers may face forgone future opportunities if GI protection is granted *carte blanche* to EU GI cheeses. The Canadian pallet is diversifying in its tastes for cheese. The market for speciality cheeses is likely to grow in the future. Unlike when a product is trademarked and thus could be produced under licence behind Canada's trade barriers to dairy products, production of products protected by a GI can only take place in the designated geographic region. Thus there can be no official production of these named products in Canada and imports would be strictly limited.

In the normal course of events, the granting of a GI requires a specific connection between the attributes of the product and the geographic area where production takes place. For example, in the EU to be granted Protected Designation of Origin (one of two GI designations):

> *The link between the territory and the specific characteristic must be more objective, as explained by the Regulation "the quality or the characteristic of which are essentially or exclusively due a particular geographical environment with its inherent natural and human factors* (Giovannucci et al., 2009, p. 61).

Thus, approval must be obtained whereby the claim of those requesting the GI as to the association of product quality and geographic exclusivity is accepted. The EU has made expanding the use of GIs as an important part of their public policy (Josling, 2006). It has been granting monopolies justified on intellectual property grounds at a rapid rate. If Canada were to give *carte blanche* recognition to GIs approved in the EU, it would give up the right to determine the validity of a GI claim for itself. In so doing it may close off opportunities for Canadian consumers to enjoy these products (given that imports are restricted) and Canadian producers to provide them.

In terms of meat products, the major area of contention will undoubtedly be the Canadian trademarked product *Parma Ham*. The EU feels it infringes on the GI *Prosciutto di Parma*. It has been a long-standing and acrimonious dispute. Canada's Maple Leaf Meats trademarked the term *Parma* in Canada in 1971. In the 1990s the EU consortium that holds the GI for *Prosciutto di Parma* began marketing its product in Canada. Maple Leaf Meats sued the Europeans for infringing its trademark and won. As a

result, the European product cannot be sold in Canada using the name Parma – to the great annoyance of the holders of the GI. This dispute goes beyond the normal squabbling over monopoly rents in a clawback case. It goes to the heart of the philosophical underpinnings of the two major methods of protecting this form of intellectual property internationally – trademarks and *sui generis* systems specific to GIs. The latter is focussed on the primacy of geography, the latter on production standards (Giovannucci et al., 2009. To recognize the EU GI for *Prosciutto di Parma* in the Canada-EU trade agreement would, effectively, require the cancelling of the Canadian firm's trademark. It is not clear to us how this could be achieved under Canadian intellectual property law. The Canadian trademark holder has invested a considerable amount into building the market for Parma Ham and is unlikely to voluntarily give up its trademark. Unlike the cases of Feta and Parmesan cheeses where the term is simply considered generic in Canada – and thus there is no question of trademark – the dispute centres on the two systems of intellectual property rights. Given the EU's long-standing *outrage* with the Parma Ham situation in Canada, it will be difficult for them to alter their publically announced position in the negotiations. For example, according to Saunders (2009):

> *Europeans are insistent that … Canada agree to abandon the use of European-region "geographical indicator" trademark names such as Parma ham and Feta cheese, limiting their usage to products from their European regions of origin.*

As with cheese, providing *carte blanche* recognition to *greenfield* EU GIs may limit opportunities for a wide range of Canadian producers in the future. Canada should seriously consider preserving the right to accept or reject the rationale put forward by those wishing to hold the intellectual property right.

7.0 Conclusion

Given the existing set of agricultural policy constraints that exist in both the EU and Canada, only limited liberalization can be expected in the agricultural sector as a result of the CETA. The original premise of the agreement was that agricultural issues would be largely taken care of in a Doha Round agreement. For example, the list of both country's *sensitive products* would have been agreed – thus, for example, Canada's supply managed products would have been removed from the *table* in the Canada-EU negotiations. In a similar fashion, the issue of EU export subsidies would have been resolved. Further, there would have been a new regime for obligations pertaining to domestic support. With the Doha Round not yet (and maybe never) completed, all of these issues, in theory, come under the ambit of the Canada-EU negotiations – *everything is on the table*.

While everything may be *on the table* it is possible to agree to disagree – to opt for something close to the *status quo*. The things that Canada really wants like secure market access when EU officials are faced with resistance from consumers, environmentalists and others with social concerns (e.g. beef produced using hormones,

products using genetic modification in their production and animal welfare regimes) are difficult areas for EU negotiators. In Canada, areas where the EU may have interests such market access for speciality cheeses strike at the heart of Canada's supply management policy – which has been a *no go* area for Canadian negotiators for decades. For Canada, concessions in the area of *trade and the environment* where the EU has long standing protectionist positions such as an unfettered acceptance of the *precautionary principle* as a justification for the imposition of trade barriers could be extremely detrimental to future Canadian agricultural exports. Geographical indications are also likely to entail difficult negotiations.

Thus, despite *everything being on the table* it is difficult to see where significant movement away from the *status quo* in agriculture can be negotiated. Most observers agree that the major areas where gains can be made in CETA are in the services sector and selected areas of manufacturing. It seems unlikely that CETA will be as all encompassing as the NAFTA with only a few agricultural products excluded from full tariff elimination. Still, it sends a bad signal if some trade liberalization is not achieved in agriculture and with a long implementation period no reason not to make progress. The major gains in agriculture are likely to be in niche markets which taken individually are small but in aggregate could provide a boost to Canadian agriculture. Most importantly, a trade agreement with the potential to open a rich market with 500 million consumers to the wide range of products and services exported by Canada cannot afford to be hijacked by challenging negotiations in agriculture.

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