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CATPRN

Canadian Agricultural Trade Policy And Competitiveness Research Network

GEOGRAPHICAL INDICATIONS, BARRIERS TO MARKET ACCESS AND PREFERENTIAL TRADE AGREEMENTS

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Crina Viju

Institute of European, Russian and Eurasian Studies
Carleton University

May T. Yeung

Estey Centre for Law and Economics in International Trade
Calgary, Canada

William A. Kerr

Department of Bioresource Policy, Business and Economics
University of Saskatchewan

<http://www.catrade.org>

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In May 2009 Canada and the European Union (EU) entered into negotiations for a Comprehensive Economic and Trade Agreement (CETA)(Viju et al., 2011). As of March 2012 these negotiations are continuing. One of the major objectives of the EU in these negotiations is to expand Canada's recognition of products that have been granted legal protection as geographical indications (GI) in the EU. In particular, the EU wants to widen the range of products recognized by Canada from an existing limited list of wines and spirits to include a range of agricultural products including cheeses and cured meats, among others. As Canada is also a member of the North American Free Trade Agreement (NAFTA), extending recognition of EU GIs in the CETA may lead to a potential conflict between the commitments made in the two preferential trade agreements.

In the wake of reforms to the EU's Common Agricultural Policy (CAP) whereby subsidies to farmers have been reduced, the EU has been attempting to maintain farm incomes by promoting the use of GIs (Josling, 2006). Geographical Indications are legally considered intellectual property and the granting of GI status endows the holders of the property rights – normally a group of agricultural producers or artisans/craftsmen – with an economic monopoly (Yeung and Kerr, 2011). It is hoped by policy makers that the monopoly will allow the farmers/artisans to extract monopoly rents and thereby increase their incomes (Giovannucci, et al., 2009). The size of the potential monopoly rents is, in part, dependant on the extent of the market where the monopoly is recognized. While GIs receive full protection in the EU's single market, international protection of GIs is weak. As a result, the EU has been attempting to strengthen the international protection of GIs through both the Doha Round of multilateral trade negotiations and by having GIs recognized in the preferential trade agreements it negotiates (Kerr, 2006). Its recent agreements with South Africa and South Korea, for example, have expanded protection of EU GIs. The EU has made it clear that similar arrangements are a priority in the CETA with Canada.

There is a major global division in how legal protection is provided for geographical indications. Approximately 160 countries, including those of the EU, use specific legislation – *sui generis* systems – to protect geographical indications while more than 50 countries, including Canada and the US, use a form of trademarks (Giovannucci et al., 2009). In some cases, products recognized as EU GIs are trademarked by local producers in non-EU markets (e.g. this is the case for Parma Ham which is made in Canada under trademark yet has an EU GI). Further, there are products which are considered to be generic and widely produced in Canada and the US (e.g. Feta cheese) yet have been granted GI status in the EU. If Canada were to recognize EU GIs in the CETA then Canadian producers of Feta cheese, for example, would no longer be able to market their product as Feta. Instead all Feta would have to be produced in Greece, the geographic place of origin, and imported into Canada. This would also be the case for US producers of products where Canada had recognized the EU GI but who had previously been exporting to Canada. As a result, it may be that US producers would lose a degree of the market access they currently enjoy.

It is a generally recognized facet of international law that when a country joins a preferential trade agreement such as the CETA, if in the process market access is lost by trading partners that are not members of the preferential agreement then those trading partners can claim compensation. In the past, compensation has been associated with countries joining a common

market where the common external tariff is higher than the joining country's previous tariffs and existing trading partners lose market access due to having to pay the higher common tariff.

Canada is a member of the North American Free Trade Agreement (NAFTA) whereby the US (and Mexico) have preferential access to the Canadian market. If Canada were to grant recognition to EU GIs in the CETA, then US exporters of any protected EU GI products could lose a degree of access to the Canadian market. The question is whether they would be entitled to compensation. While this question cannot be answered until a dispute is brought to the NAFTA dispute settlement system, there appear to be legitimate issues the US could raise.

Certainly, the US is aware of the EU strategy to extend the protection of its GIs through its preferential trade agreements. The US dairy industry complained of their potential loss of market access to South Korea when EU-Korea trade agreement included provisions for the protection of EU GIs. The vested interests in the US agricultural sector are certainly cognizant of the threat to their market access posed by the recognition of EU GIs in preferential trading agreements, including their access to the Canadian market. The lobbying effort at the political level in the US has been effective in making members of the US Congress aware of the issue and in prodding members of the US House of Representatives into action. For example, on September 27, 2010, fifty-six members of the Congressional Dairy Farmers Caucus sent a letter to Ambassador Ron Kirk, the United States Trade Representative, to share their concerns:

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

Thus, public policy makers in Canada should expect the US to object to the extension of protection to EU GIs in the CETA. The expected gains made in other areas of the CETA for agreeing to protect EU GIs need to be weighed carefully against the potential cost of trade actions through NAFTA. The NAFTA has relatively strong commitments pertaining to intellectual property, although they remain largely untested. In the case of geographical indicators, the NAFTA commitments are structured around the trademark system used by the US and Canada. Other aspects of the NAFTA, such as the investment provisions, may also be used to challenge the negative impact of Canada granting intellectual property protection to GIs.

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