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BARRISTERS & SOLICITORS LLP

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EDITOR:

Henry J. Chang
Direct 416.597.4883
hchang@blaney.com

This newsletter is designed to highlight new issues of importance in international trade and business related law. We hope you will find it interesting and welcome your comments.

For more information, feel free to contact any of the lawyers who wrote or are quoted in these articles, or one of the co-chairs of our International Trade and Business Group:

Henry J. Chang, co-chair
Direct 416.597.4883
hchang@blaney.com

Stan Kugelmass, co-chair
Direct 416.593.3943
skugelmass@blaney.com

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CANADA AND THE EUROPEAN UNION CONCLUDE NEGOTIATIONS ON TRADE DEAL

Henry J. Chang

Introduction

On October 18, 2013, Canada and the European Union ("EU") reached an agreement, in principle, on a Comprehensive Economic and Trade Agreement ("CETA"); this will be the first free trade agreement between the EU and a G8 country. CETA covers most aspects of the Canada-EU bilateral economic relationship, including trade in goods and services, investment, and government procurement. It also grants the flexibility to include areas of mutual interest beyond those that have traditionally been included in Canada's trade agreements, such as regulatory cooperation. Further details of the agreement are provided below.

Overview of CETA

According to the Canadian Government, CETA will provide Canada with preferential market access to the EU's more than 500 million consumers and to its annual $17 trillion in economic activity. It further states that a joint study conducted with the EU, which supported the launch of negotiations, concluded that such an agreement could boost Canada's income by $12 billion annually and bilateral trade by 20%. From its perspective, the EU claims that CETA will raise the level of its annual GDP by approximately €12 billion a year.

Approximately 98% of all tariffs will be eliminated on the first day that CETA comes into force; the remaining tariffs will be phased out over several years. The Canadian industry sectors that stand to benefit the most from CETA include the following:

a) **Advanced Manufacturing:** Most tariffs on advanced manufactured products, including those on electrical parts and equipment and medical devices will be immediately eliminated.

b) **Automotive Industry:** Up to 100,000 passenger vehicles per year will be exported to the EU duty free. CETA will also eliminate EU tariffs on automobile parts.

c) **Chemicals and Plastics:** CETA will immediately eliminate existing EU tariffs on all chemicals and plastics, including plastic floor coverings, chemicals used in photography, and silicon.

d) **Agriculture and Agri-Food:** Almost 94% of EU agricultural tariff lines will be duty-free, including wheat and vegetable oil.

e) **Beef and Pork Producers:** Under CETA, beef ranchers would be able to export 64,950 metric tonnes of beef per year duty free; 50,000 tonnes more than the current annual

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Henry J. Chang is co-chair of the firm's International Trade and Business Group. A recognized authority in the field of foreign law, Henry is licensed as a Foreign Legal Consultant by the Law Society of Upper Canada, and is the Official Research Partner of the International Bar Association and the Strategic Research Partner of the ABA Section of International Law.

Henry may be reached directly at 416.597.4883 or hchang@blaney.com.

quota. Canadian pork producers would be able to export 80,000 metric tonnes of pork per year; significantly more than the current quota of 6,000 metric tonnes.

f) **Food Processing:** CETA will immediately eliminate existing EU tariffs on processed foods and beverages.

g) **Forest and Value-Added Wood Products:** CETA will immediately eliminate existing tariffs on all forest products, including: plywood, prefabricated wooded buildings, and particle board and oriented strand board panels.

h) **Metals and Mineral Products:** CETA will immediately eliminate existing EU tariffs on metals and mineral products.

i) **Fish and Seafood Products:** Upon coming into force, almost 96% of EU tariff lines for fish and seafood products will be duty-free. 100% of these tariff lines will be duty-free 7 years later.

j) **Information and Communications Technology ("ICT"):** CETA will immediately eliminate all existing EU tariffs on ICT products, including parts for visual signalling equipment and optical fibre cables.

On the other hand, the Canadian industry sectors that stand to lose the most as a result of CETA include the following:

a) **Dairy Products:** Canadian dairy producers could be adversely affected, since European cheese imports to Canada will double to 30,000 metric tonnes per year under CETA.

b) **Generic Drug Manufacturers:** Under CETA, Canada will be required to lengthen the patent protection for brand-name drugs produced by EU pharmaceutical companies from 20 to 22 years. This will adversely affect generic drug manufacturers in Canada and Canadian consumers as well.

Trade in Services

According to the Canadian Government, citizenship or residency requirements, barriers to temporary entry, and ownership and investment restrictions can all act as barriers to exports of services. CETA will immediately establish preferential access to and greater transparency in the EU services market. Among other things, it is likely that CETA will establish a process for the temporary entry of professionals and business persons, in the same manner as the *North American Free Trade Agreement*.

Government Procurement

CETA will expand and secure opportunities for Canadian firms to supply their goods and services to the 3 main EU level institutions (the EU Commission, Parliament, and Council), the 28 EU member states and thousands of regional and local government entities within the EU, as well as with entities operating in the utilities sector. All Canadian levels of government will also open up their public procurement markets to EU suppliers.

Foreign Investment Thresholds

Due to recent amendments to the *Investment Canada Act*[1] earlier this year, the minimum review threshold for foreign direct investments made by World Trade Organization members will be set at $1 billion in enterprise value.[2] However, under

[1] R.S.C., 1985, c. 28 (1st Supp.).
[2] http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6249902.

"...the Minister of Industry currently has the authority to review any investment (either proposed or already implemented) made by a non-Canadian if there are reasonable grounds to believe that it may be injurious to national security."

CETA, the minimum review threshold for foreign direct investment made by EU investors will be set at $1.5 billion in enterprise value.

Conclusion

Based on the political agreement that has now been reached, technical discussions will need to be completed so that the final legal text of the agreement can be prepared. Once this has been completed, Canada's provinces and all of the EU's 28 member states, plus the European Parliament, must ratify CETA before comes into force. ■

CANADA BLOCKS PROPOSED ACQUISITION OF ALLSTREAM ON NATIONAL SECURITY GROUNDS

Henry J. Chang

On October 7, 2013, the Canadian Government blocked the proposed acquisition of Allstream Inc. ("Allstream"), a subsidiary of Manitoba Telecom Services Inc. ("MTS"), by Accelero Capital Holdings ("Accelero"). Accelero is an investment firm co-founded by Egyptian billionaire Naguib Sawiris, who was a key investor in the 2009 launch of Wind Mobile, one of Canada's wireless telecommunications providers.

The Canadian Government's decision was based on the national security provisions of the *Investment Canada Act*.[1] As a result of 2009 amendments to the *Investment Canada Act*, the Minister of Industry currently has the authority to review any investment (either proposed or already implemented) made by a non-Canadian if there are reasonable grounds to believe that it may be injurious to national security. However, national security reviews rarely occur and, when they do, they typically involve situations where the Canadian business operates in military or other strategically-sensitive areas.

The biggest concern that foreign investors have regarding nationality security reviews is that they lack transparency. The relevant parties answer questions posed by the Government of Canada and are notified of the decision months later, usually with very little explanation. The *Investment Canada Act* is already criticized for applying a vague "net benefit to Canada" test when reviewing regular investments. The lack of transparency in national security reviews creates even greater uncertainty for foreign investors.

In the brief statement issued by the Minister of Industry on October 7, 2013, the only explanation given for the Canadian Government's decision to block Accelero's acquisition of Allstream was as follows:

> MTS Allstream operates a national fibre optic network that provides critical telecommunications services to businesses and governments, including the Government of Canada.

This vague statement fails to provide specific reasons for the decision or to further explain the criteria considered by the Canadian Government when performing national security reviews.

The Canadian Government's decision to block the Allstream acquisition was a big surprise for both MTS and Accelero. According to MTS' sub-

[1] R.S.C., 1985 (1st Supp.).

sequent press release, it was heavily influenced by the fact that Accelero's principals are a well-known and experienced group of telecom executives who have previously been permitted to invest in and operate telecom assets in a number of countries around the world, including Canada (through Wind Mobile).[2]

The MTS press release further states that the Federal Government's past active support of Accelero's principals played a significant role in its decision to sell to Accelero, following the company's strategic review process. MTS also believed that the proposed transaction was consistent with recent changes in Federal policy aimed at increasing foreign direct investment in Canada's telecom sector.

During its discussions with the Canadian Government, Accelero apparently offered to give up federal government contracts, to stop carrying sensitive government data, and to refrain from using telecom equipment from Chinese-owned Huawei Technologies Co. Ltd. However, these concessions were insufficient to satisfy the Canadian Government's concerns regarding national security.

The Allstream decision may raise additional concerns for BlackBerry, which is still soliciting potential buyers despite the fact that it has signed a tentative agreement with a group of Canadian Investors, led by Fairfax Financial Holdings Limited ("Fairfax"). When China-based Lenovo previously indicated that it was assessing potential acquisition targets, including BlackBerry, Finance Minister Jim Flaherty responded by saying that certain local technologies were off-limits to foreign buyers and that the Canadian Government would look "carefully" at any bid from Lenovo. BlackBerry operates secure servers for the Canadian and United States Governments, which could raise national security issues in the event that a foreign investor offers to acquire the company. ■

2 http://www.newswire.ca/en/story/1238241/government-of-canada-rejects-mts-sale-of-allstream-to-accelero-capital-holdings.

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Blaney McMurtry
BARRISTERS & SOLICITORS LLP

2 Queen St. East, Suite 1500
Toronto, Canada M5C 3G5
416.593.1221 TEL
416.593.5437 FAX
www.blaney.com