Implications of the Brexit Vote for the CETA

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According to Canada's International Trade Minister, Chrystia Freeland, her European counterparts are highly motivated amidst the fall out of the United Kingdom's (UK) vote to leave the European Union (EU) to demonstrate that the EU is a significant player on the international stage, with or without the UK. The signing and ratification of the Comprehensive Economic and Trade Agreement (CETA) represents an opportunity to prove it. In a recent interview with *The Globe and Mail*, she is quoted as stating: "If anything, the political momentum for the CETA is even stronger than it was before because the EU is very determined to show it's able to move forward." In short, Minister Freeland is offering assurances to Canadians that with the CETA having taken on important political significance in the face of the Brexit vote, it will be signed in the fall and ratified next year, as planned.

Easier said than done? No doubt.

While the ultimate goal of a Canada-EU trade agreement coming to fruition will likely still occur, realistically, complications caused by the Brexit vote may significantly delay the process of its implementation.

The Brexit referendum question is answered. But, it has created a host of others. Uncertainty abounds.

What is the CETA to Canada without the UK? And where exactly will the UK, the European Union's number two economy and Canada's largest trading partner, ultimately be landing in all of this? It appears many in Britain are currently hoping for utopia: that Britain can leave the EU but stay in the single market with all the benefits that flow from that. With a "#BRENTRY" hashtag campaign on Twitter in full force and a massive email petition to British Members of Parliament, this seems a popular collective wish. Whether such a result is realistic is a live issue, with more questions than answers on the way forward for CETA and Canada's international trading relationships with the EU and the UK.

Potential Complications for the CETA

Given the current flux and myriad interests and dynamics, we foresee that CETA complications could arise in three areas.

1. A CETA Without the UK is not the Same CETA for Canada

With the Brexit vote, Canada is posed with a situation where a critically important component of the EU economy, namely the UK, will no longer be covered by CETA. Canada negotiated and agreed to the terms of CETA on the premise that the agreement included the UK. With the Brexit, Canada has been placed in a position where it must consider whether the “balance of concessions” from the negotiations has changed enough to make it necessary to modify the agreement.

At their core, trade agreements reflect the balance of the give-and-take between the negotiating countries. In the context of CETA, Canada agreed to open access to its market in return for improved access to the larger EU market. For example, Canada eliminated or reduced tariffs on most products, granted increased access for dairy products, and agreed to apply rules to provincial procurements. If the UK does in fact leave the EU following the Brexit vote, the number one destination for Canadian exports to the EU is no longer covered by CETA. This is an incredibly significant loss: the UK accounts for approximately 18% of the total EU market.

The question thus arises: Is Canada now getting enough for what it gave up?

The answer is not an easy one. On the one hand, Canada was very successful in its negotiations and the give-and-take that was crystallized when the UK was still a going concern within the EU context might still be acceptable. However, a number of questions around some of the hotbed issues in the CETA negotiations need to be revisited and evaluated to reconsider whether the terms are still fair for Canada. For example, under the CETA as negotiated (envisioning the UK as a member of the EU), Canada agreed to open for the EU a new bilateral quota of 17,700 tonnes of cheese (16,000 tonnes of which are for high quality cheeses and 1,700 tonnes for industrial cheese). Moreover, 800 tonnes of high quality cheese are to be added through a technical adjustment to the EU portion of an existing World Trade Organization Tariff Rate Quota (TRQ). The effective total is thus set to be 18,500 tonnes. This will more than double the EU's export of cheese to Canada. This will represent an increase of EU cheese exports into Canada of 128% and corresponds to more than 4% of the Canadian market.

In contemplation of the UK's exit from the EU, should Canada agree to continue to allocate the full 18,500 metric tonnes to the EU and then negotiate a further TRQ for the UK? Or, should it reduce this amount to leave some open for the UK (for example, Stilton blue cheese) so that the total volume for CETA and the UK stays the same at the contemplated 18,500 metric tonnes? Other examples of whether modifications to EU access set out in CETA include: origin quotas (more liberal rules of origin that apply to certain volumes of certain products), processed foods, dog and cat food, fish and seafood, and textiles and apparel.

There are also EU quotas that apply to Canadian outbound trade, including those to processed shrimp, frozen cod, wheat, sweetcorn, beef and veal, and pork. For these quotas the same concerns arise albeit in respect of accessing the UK and EU markets. How will they be divided between the UK and EU? If Canada agrees to the current CETA text, will it have to negotiate new access with the UK? Would the EU agree to opening its market to the same extent given that the UK is no longer there?

Delays in implementation may be inevitable if a rebalancing exercise of the give-and-take of the CETA is carried out. There has been no official announcement of Canada's intention to date, although an unnamed government official of International Trade recently quoted in *The Globe and Mail* stated that Canada does not wish to renegotiate the CETA due to concerns it could place the entire treaty at risk. Whether the CETA will be re-opened or not remains live, with pros and cons in both approaches.

2. The Loss of the UK as a CETA Advocate

The UK has been a longstanding proponent of the CETA. With the UK now ultimately posed to exit the EU and bow out of CETA, it may prove more difficult to obtain ratification of the agreement by the individual EU member states. On a positive note, the UK has undertaken to vote in favour of CETA as it will in all likelihood still be part of the EU when the vote occurs as negotiations for withdrawal will take time.

3. CETA One of Many Complex Issues Now Requiring Attention from EU and UK

The vote by the UK to leave the EU has resulted in the relationships between the EU, UK, Scotland and Ireland coming under discussion. England voted for Brexit, voting “Leave” by 53.4%, as did Wales, voting "Leave" by 52.5%. However, Scotland and Northern Ireland both backed staying in the EU. Scotland backed "Remain" by 62%, while 55.8% in Northern Ireland voted "Remain".

These divergences mean that: (i) there is uncertainty as to the coverage and nature of the EU and therefore the coverage of the CETA; and (ii) the EU and the UK have many complex issues to address as quickly as possible. It is unclear at this point whether the CETA will be given a high enough priority to get the necessary attention to move it forward as scheduled. It is likely that the length of delay in moving forward with the CETA will depend on where it stands on the list of EU and UK priorities. The UK now finds itself in the position of having to negotiate new trade agreements with all of the countries with which the EU currently has free trade agreements. The CETA will be one of many in the mix. Realistically, trade agreement negotiations will likely overwhelm the UK in the short term.

4. Ratifying and Implementing the Agreement Now and Sorting it out Later

One option is for Canada and the EU to ratify and implement the agreement now and sort out the UK's exit from the EU at a future date. In theory, the UK could inherit the pre-separation EU treaties including the CETA. However, at least in the case of the CETA, certain rights and obligations, such as the quotas referred to above, would have to be apportioned between the EU and the UK. Such an exercise would involve three-way negotiations between the EU, UK and Canada and could be very complicated and difficult given how such apportionment could impact the original balance of the give-and-take reflected in the CETA.

What can we Expect any Modifications to Look Like?

There is no question that it is in both Canada and the EU's interests to finalize and implement CETA. From Canada's perspective, the EU is a key market. The CETA is a landmark agreement that is viewed by many as representing a gold standard for trade agreements to come. Aside from the trade benefits, a trade agreement with Canada post-Brexit would serve to send a much needed positive signal to currently testy global markets.

Still, the question remains: does it now need to be modified? It is not possible to speculate on the changes. The situation is fluid as it has not yet been determined now what will happen between the UK and the EU and between Ireland and Scotland and the EU as relationships are considered and redefined.

Possibilities include the following:

- A CETA minus the UK or Britain, with or without a rebalancing of concessions to reflect this;
- A trilateral agreement between Canada, the EU and the UK which could look very similar to the current CETA; or
- Two separate agreements between Canada and the EU and Canada and the UK which might not look like the current CETA (Note that the benefits access to the UK market bring might be diminished by the change in access between the UK and EU).

While there are currently many uncertainties, what is certain is this: there has been a tectonic shift in the trade landscape that will require time for Canadian trade officials to consider and determine the best way forward.

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