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## **CETA Update – More than Beer, Ham and Cheese**

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As reported earlier, Canada and the European Union started negotiating the Comprehensive Economic and Trade Agreement (CETA) back in 2009. It was expected that the Agreement will take effect in 2016; however, the document has recently undergone some changes and the new timeline for coming into force is now 2017.

Canada's Minister of International Trade and the European Union's Commissioner for Trade announced on February 29, 2016 the completion of the legal review of CETA. The Agreement is currently being translated in 22 languages.

This free trade agreement will bring substantive changes to the protection of Geographical Indications (GIs) in Canada. CETA is going to expand the protection in Canada from wines and spirits to a broad list of agricultural products and foodstuffs originating in Europe. The list will include cheeses, oils and animal fats, vinegars, spices, dry-cured meats, fresh and processed fruits and nuts, fresh, processed and frozen meats, fresh and processed vegetable products, olives, cereals etc.

Pursuant to the current and, as recently reported, the final reading of Article 20.19 of the Agreement, each party will provide the legal means for interested parties to prevent the use of GIs of the other party for a product that does not originate in the place of origin specified for that geographical indication; or does originate in the place of origin specified for that geographical indication but was not produced or manufactured in accordance with the laws and regulations of the other Party; or if the use of any means in the designation or presentation of a product indicates or suggests that the product originates in a geographical area other than the true place of origin, so as to mislead the public as to the geographical origin of the product.

The issue of GIs is not without controversy in Canada. There are considerable differences in the mechanisms for protection of this form of intellectual property between Europe and Canada. Currently, the only form of protection afforded to GIs in Canada, other than for wines and spirits, is through certification marks. Further, many products that enjoy GI protection in Europe have become generic terms in Canada. As a result, it is expected that the conflicting situations between Canadian trademark holders and EU GIs may arise mainly in meat and cheese area.

In order to address the concerns raised by Canadian food manufactures whose business will be substantially affected by the CETA Agreement, the following exceptions have been included in the Agreement:

- Canada will not be required to provide the legal means for interested parties to prevent the use of GI when the term is accompanied by expression such as



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“kind”, “type”, “style”, “imitation” or the like accompanied with a visible indication of the geographical origin of the product.

- The protection of the geographical indications will not prevent the use in Canada of those indications by any party that made commercial use of those indications in the class of “cheeses” preceding the date of October 18, 2013.
- The protection of the geographical indications will not prevent the use in Canada of those indications by any party that made commercial use of those indications in the class of “fresh, frozen and processed meats” for at least five years preceding October 18, 2013.
- The protection of the geographical indications will not prevent the use in Canada of those indications by any party that made commercial use of those indications in the class of “dry-cured meats” and “cheeses“, respectively, for at least ten years preceding October 18, 2013.
- If a trademark has been applied for or registered in good faith, or if rights to a trademark have been acquired through use in good faith, in a Party before the applicable date set out in paragraph 6, measures adopted to implement this Subsection in that Party shall not prejudice the eligibility for or the validity of the registration of the trademark, or the right to use the trademark, on the basis that the trademark is identical with, or similar to, a geographical indication.

Many food producers on both sides of the ocean whose businesses will be affected by CETA have been anxiously awaiting the final reading and the implementation of the Agreement.

On the Canadian business side of things, there will be winners and there will be losers. The only clear winners are Canadian consumers. For them, CETA may initially bring marketplace overload and confusion, but will ultimately provide many more choices. They will be able to enjoy the short Canadian *al fresco* dining season by choosing between Parmigiano Reggiano or parmesan cheese, Prosciutto di Parma or Parma style ham, Ελιά Καλαμάτας or kalamata variety olives.

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