

International Trade and Customs Law Bulletin

July 2009

Fasken Martineau DuMoulin LLP

Canada-EFTA Free Trade Agreement Enters Into Force

Peter E. Kirby, Henri C. Alvarez and Dierk Ullrich, Montreal and Vancouver

After ten years of on again – off again negotiations, a free trade agreement between Canada and the four countries of the European Free Trade Association (EFTA)—Norway, Switzerland, Iceland, and Liechtenstein—will finally come into force on July 1, 2009. The Canada-EFTA FTA is an old style (first generation) trade agreement that is focused on tariff reductions and trade in goods while ignoring trade in services, investment or intellectual property. The agreement aims to increase merchandise trade in a variety of sectors, including forest products, pulp and paper products, manufactured housing, aluminum, cosmetics and motor vehicles and agriculture and agri-food products. This is Canada’s first free trade agreement with European countries.

Canadian exports to the EFTA countries include nickel, precious stones and metals, pharmaceuticals, base metals and machinery, but two-way trade is unbalanced, with Canada importing some \$9 billion a year from EFTA countries but exporting only \$4 billion. It is hoped that the agreement’s tariff reductions will stimulate Canadian exports.

The EFTA was established in 1960 as an alternative to the European Economic Community (now the European Union). Most former EFTA members, including Great Britain, Sweden and Portugal, have since joined the European Union. Together, EFTA (except Switzerland) and the European Union form the European Economic Area, consisting of 30 countries and nearly 500 million citizens.

Canada first announced its intentions to pursue a free trade agreement with the EFTA in 1998. Negotiations were concluded on June 7, 2007, and the FTA was signed in Davos, Switzerland, on January 26, 2008. The Canadian government tabled

Canada – EFTA Trade and Background on the Free Trade Agreement

Two-way merchandise trade between Canada and the EFTA countries was \$13.2 billion in 2008. The EFTA countries are Canada’s seventh-largest export destination and the world’s sixteenth largest merchandise-

Vancouver

Calgary

Toronto

Ottawa

Montréal

Québec City

London

Johannesburg

www.fasken.com

legislation in Parliament to implement the FTA and three associated bilateral Agreements on Agriculture with EFTA nations in early 2009. The legislation received Royal Assent on April 29, 2009.

Scope of the Free Trade Agreement

The Canada EFTA FTA provides the following key benefits:

- Immediate elimination of all customs tariffs on non-agricultural goods with a very limited exception for tariffs on ships, boats and shipbuilding equipment which will be eliminated over a period of ten (10) to fifteen (15) years
- Staged reductions on tariffs on selected agricultural and agri-food products
- A prohibition of import and export restrictions and other non-tariff barriers to trade
- Incorporation of Canada's obligations in relation to the World Trade Organization, in particular the rules on subsidies, anti-dumping, state trading enterprises and public procurement.

Even though the FTA focuses on liberalizing trade in goods, it also envisions enhanced co-operation in the areas of trade in services, investment, competition law and policy.

No Investment Chapter

While tariff reductions are good and will enhance trade, the Canada-EFTA FTA is disappointing because of its limited scope. Modern trade agreements focus on a wide range of bilateral economic issues including trade in services, direct investment and intellectual property rules. The Canada-EFTA FTA only deals with bilateral merchandise trade and virtually ignores all other economic ties.

In 2008, EFTA foreign direct investment in Canada was \$18.4 billion, and Canadian foreign direct investment into Norway and Switzerland alone was \$10 billion. Despite the fact that the value of bilateral investment is significantly greater than that of merchandise trade, the Canada-EFTA FTA does nothing to establish rules for investment protection and Canada does not have bilateral foreign investment protection agreements with any of the EFTA countries. The best that the parties could do was to agree to "work together with the aim of creating the most favourable conditions for expanding investment between them." A joint committee will review issues related to investment and consider adopting liberalization measures no more than three years after the FTA comes into force.

Trade Talks with the European Union

Perhaps the best thing about the Canada-EFTA FTA is that nobody expects it to be a model for the agreement with the European Union countries that is currently being negotiated. In May 2009, Canada and the European Union agreed to launch negotiations towards a comprehensive economic partnership agreement. The negotiations, which also involve the provinces and territories on the Canadian side, are to be concluded within two years. The scoping exercise that has already been undertaken promises an ambitious agreement that will tackle merchandise trade, services, investment, intellectual property and even labour mobility.

For more information on the Canada-EFTA Free Trade Agreement, please contact the authors:

Peter E. Kirby
514 397 4385
pkirby@fasken.com

Henri C. Alvarez
604 631 3129
halvarez@fasken.com

Dierk Ullrich
604 631 4847
dullrich@fasken.com

Our International Trade & Customs Law Group Contacts:

Vancouver
Henri C. Alvarez
604 631 3129
halvarez@fasken.com

Toronto
Mark N. Sills
416 865 5495
msills@fasken.com

Ottawa
David K. Wilson
613 236 3882
dwilson@fasken.com

Montréal
Peter E. Kirby
514 397 4385
pkirby@fasken.com

London
Adrian Jones
+44 207 917 8531
ajones@fasken.co.uk

The texts included in this collection are intended to provide general comments on Securities Law. They reflect the point of view of their respective author and are not opinions expressed on behalf of Fasken Martineau DuMoulin LLP or other member corporations. These texts are not intended to provide legal advice. Therefore, readers should seek out advice on issues specific to them before acting on any information set out in these texts. We would be pleased to provide additional information on request.

© 2009 Fasken Martineau DuMoulin LLP

Vancouver
604 631 3131
vancouver@fasken.com

Calgary
403 261 5350
calgary@fasken.com

Toronto
416 366 8381
toronto@fasken.com

Ottawa
613 236 3882
ottawa@fasken.com

Montréal
514 397 7400
montreal@fasken.com

Québec City
418 640 2000
quebec@fasken.com

London
44 207 917 8500
london@fasken.co.uk

Johannesburg
27 11 685 0800
johannesburg@fasken.com