

WINES AND SPIRITS IN THE COMPREHENSIVE AND ECONOMIC TRADE AGREEMENT (CETA): AN ANALYSIS

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SUMMARY: 1. Introduction – 2. Wine and spirits market in the Canadian provinces: an overview – 3. The European Union and Canada on trade in wines: analysis and criticism – 4. The new dispute resolution system in wine sector in CETA – 5. The non-discriminatory principle in CETA: the wine and spirits commercial treatment according the GATT article XVII – 6. Protected Geographical Indication – 7. The Joint declarations in CETA: Annex 30-C and 30-D – 8. Conclusions.

1. – Created between the European Union and Canada and not yet ratified by Italy, the Comprehensive and Economic Trade Agreement, better known as CETA, is a trade agreement to promote and protect shared values and perspectives of the two Parties with the final goal of boosting trade and increasing market growth and jobs¹. Launched in May 2009 during the EU-Canada Summit in Prague, the CETA was conceived to facilitate investments, improve business opportunities and offer companies of both parties the best treatment that the other has ever offered to any trading partner². Eliminating direct and indirect barriers still existing between the two Atlantic Ocean's coasts, CETA's goals are to bring together the best practices of both sides, and increase transparency on government subsidies to companies³. In August 2014, the final text was finalized and it was approved by all the European

¹ Hübner K., *Canada and the EU: Shaping transatlantic relations in the twenty-first century*, in: Europe, Canada and the Comprehensive Economic and Trade Agreement, K. Hübner (ed.), New York, Routledge, 2011, pp. 1 ff.

² Dobrescu E. M. e Dobrescu E. M., *The CETA Treaty - The Trojan Horse of Europeanization*, in Global Economic Observer, Vol. 5, Fasc. 2, 2017.

³ In EP Plenary session: Joint debate - EU-Canada CETA. Opening by Antonio Tajani, EP President. Statement Artis Pabriks (EPP, LV), rapporteur (9:14-9:21). Video on <http://audiovisual.europarl.europa.eu/Assetdetail.aspx?id=3edc773d-447a-4e50-bf09-a71a00721592>



Union member states⁴ within two years. The deal was subsequently approved on 15 February 2017 by the European Parliament, and most of the landmark trade agreement was applied provisionally during the year 2017, while the remaining parts of the agreement are subject to ratification by the EU national legislatures⁵. CETA is an all-comprehensive framework to create a cooperative and coordinate system⁶ that include, *inter alia*, topics as: data protection, public health, safety, environment, taxation, intellectual property, anti-dumping and agro-food product geographical typical indication⁷. The scope of the Agreement, according to art. 1. 4 of CETA, is to establish a free trade area in conformity with Article XXIV of the GATT 1994 and Article V of the GATS to confirm their rights and commitments under the World Trade Organization rules and create customs and trade facilitation⁸. The Parties also reaffirm their rights and obligations under Article VI of GATT 1994, the Anti-dumping Agreement and the SCM Agreement for a fair and transparent process⁹. According to the intentions of both Parties, CETA may represent a success for free exchange of goods and labor thanks to a policy able to lower customs tariffs and to remove other barriers to trade between the EU and Canada¹⁰, uphold the highest standards in areas such as food safety, workers'

⁴ The Agreement was signed on 30 October 2016 by the Prime Minister of Canada, Mr. Trudeau. For further information on trade negotiation process see on http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf and <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/agreements/>

⁵ «CETA: MEPs back EU-Canada trade agreement» in <http://www.europarl.europa.eu/news/en/news-room/20170209IPR61728/ceta-meps-back-eu-canada-trade-agreement>.

⁶ More detail in Pavic S., Fombonne D., Dattu R., *Analysis of the Canada-EU Comprehensive Economic and Trade Agreement: A Call for Revising Strategic Business Plans*, November 2013, <https://www.osler.com/en/resources/governance/2013/corporate-review-november-2013/analysis-of-the-canada-eu-comprehensive-economic-a>.

⁷ Note from the General Secretariat of the Council, Bruxelles 27. 10. 2016

⁸ Included in Chapter III – Trade remedies of the CETA art. 3. 1 «General provisions concerning anti-dumping and countervailing measures». A summary of the chapter on <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>

⁹ Included in Chapter III – Trade remedies of the CETA art. 3. 2 «Transparency». A summary of the chapter on <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>

¹⁰ To understand the dimension of this agreement is possible consider that in 2016 was more than €29. 1 billion the number of imported goods from Canada and €35. 2 billion the exported goods and experts consider this numbers could rise by more than 20% under the full implemented agreement.

rights and the environment, respecting the strongest principles of democracy and offering a greater choice for consumers¹¹. Thirty chapters, thirty-five annexes and more than one thousand pages constitute this agreement which is now under review by the EU national Parliaments¹². Published in one with his Joint Interpretative Instrument¹³, the CETA looks to introduce a «*free and fair trade in a vibrant and forward-looking society*» in order to «*help boost trade and economic activity, while also promoting and protecting our shared values and perspectives on the role of government in society*»¹⁴; as a matter of fact, according to the articles included in chapter two, EU and Canada – immediately or after a transitional period of no more than seven years – it will progressively liberalize trade in goods¹⁵. CETA also include new rules in the alcoholic beverages area. Specifically, it includes and partially modifies the 2003 Wines and Spirit Drinks Agreement signed by the European Community and Canada¹⁶. Scope of this work is analyzing the rules connected to the wine market, such as defined by CETA, focusing the attention on the differences existed with the 2003 wine and spirits Agreement in order to understand limits and potentialities connected to the new assessment.

2. – To better understand the system existed in wine sector and how CETA is working on it, previously is important underline that according to

¹¹ The benefits of CETA in http://trade.ec.europa.eu/doclib/docs/2016/july/tradoc_154775.pdf, July 2016.

¹² For a more complete overview, see on <http://ec.europa.eu/trade/policy/countries-and-regions/countries/canada/>.

¹³ A brief explication of the CETA chapter by chapter is provided on the EU official website focus on the bilateral agreement at <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>

¹⁴ Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States, Brussels, 27 October 2016 (OR. en) 13541/16 LIMITE WTO 300 SERVICES 28 FDI 23 CDN 24.

¹⁵ Ferrante V., *The Social Dimension of the Euro-Canadian CETA*, in LABOR, ed. Pacini giuridica, 2017. Also: Healy T., *Canadian and European Unions and the Canada—EU CETA Negotiations*, in Globalizations, Vol. 11, 2014.

¹⁶ The text of the Agreement between the European Community and Canada on trade in wines and spirits drinks entered in force on June 2004 can be accessed at: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=292>

the Canadian system, provinces have the authority to create local rules also in the alcohol sale market. As consequence, British Columbia, Newfoundland, Labrador and Nova Scotia have decided to sell only local wine in provincially-owned and private liquor stores.

Canadian wine market is also regulated by the single provinces in a way here briefly described.

In Alberta wine is sold just by privately-owned liquor stores while in Saskatchewan just three similar stores exist and the same products are mainly available at provincially-owned liquor stores, rural franchises licensed by the government and at various «off sales» connected to bars and restaurants.

A good mix of government-run and private-wine and beer-stores is present in Manitoba, where also hotels can sell beer as licensed vendors, akin to «off sales».

In Quebec, wine (and beer) are sold in grocery stores, «corner stores» and in «government-run outlets».

In New Brunswick, like as other provinces, alcohol is sold in «provincially-owned liquor store outlets» with the possibility to buy a limited selection of wines at some grocery stores, similarly in Prince Edward Island where beer, wine and spirits are sold at provincially-owned liquor store outlets and in a limited number of licensed agency stores ¹⁷.

3. – For many years, Canada has been the fourth largest export market for EU wines ¹⁸; before CETA two past agreement were negotiated: the first one in 1989 ¹⁹ and the second one in 2003 ²⁰. The idea behind the past agreements

¹⁷ USDA Foreign Agricultural Service. Global Agricultural Information Network. GAIN Report on Wine and Spirits CA13042 - 07/26/2013.

¹⁸ Commission Européenne Direction Générale De L'agriculture Et Du Développement Rural C. 3. Vin, alcools, tabac, semences et houblon Direction C. économie des marchés agricoles (et OCM) https://ec.europa.eu/agriculture/sites/agriculture/files/wine/statistics/wine-trade-2015_en.pdf

¹⁹ Agreement between the European Economic Community and Canada concerning Trade and Commerce in Alcoholic Beverages, done at Brussels on 28 February 1989, as amended, (the «1989 Alcoholic Beverages Agreement»).

An interested overview is provided by Heien D. and Sims E. N. , *The impact of the Canada-United States free trade agreement on U. S. wine exports*, in American Journal of Agricultural Economics, num. 82, February 2000.

²⁰ The Agreement between the European Community and Canada on Trade in Wines and Spirit Drinks, done at Niagara-on-the-Lake on 16 September 2003 (the «2003 Wines and Spirit Drinks Agreement»).

was create a more efficient system inspired by the «Convention on the harmonized commodity, description and coding system» signed in Brussels ²¹ on 14th June 1983 and on this way, CETA includes a new Wine Agreement in Article 30. 8 (paragraph 5) of Chapter Thirty that represent the third generation of wine and spirits agreement that includes and partially modifies the Agreement signed by the European Community and Canada in 2003 ²².

The 2003 Agreement between the European Community and Canada on trade in wines and spirit drinks ²³ is composed by forty-two articles and several annexes and the objective was to create «*more favorable conditions for the harmonious development of trade in wine and spirit drinks on the basis of equality and mutual benefit*» ²⁴. Collected in nine titles, annexes and articles ²⁵ the Agreement is designed to facilitate and promote trade in wines and spirits based on a non-discrimination and reciprocity principle ²⁶.

The 2003 Agreement is completed by several annexes and, among them, the Annex VIII that sets out amendments to the 1989 Wine Agreement and declares the national treatment and most-favored-nation treatment principles for alcoholic products, including a specific derogation for the

²¹ According Article 1 «*For the purpose of this Convention: a. the "Harmonized Commodity Description and Coding System", hereinafter referred to as the "Harmonized System", means the Nomenclature comprising the headings and subheadings and their related numerical codes, the Section, Chapter and Subheading Notes and the General Rules for the interpretation of the Harmonized System, set out in the Annex to this Convention*».

²² CETA Article 30. 8 define «*Termination, suspension or incorporation of other existing agreements*». A brief explication of the CETA chapter by chapter is provided on the EU official website focus on the bilateral agreement at <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>.

²³ Agreement between the European Community and Canada on trade in wines and spirit drinks on Official Journal of the European Union 06. 02. 2004.

²⁴ Title I Article 1 «*Objectives*» Agreement between the European Community and Canada on trade in wines and spirit drinks on Official Journal of the European Union 06. 02. 2004.

²⁵ The 2003 Agreement includes: an introductory title on initial provisions that indicates objectives, scope and definitions; three titles dedicated to aspects connected to wine production and trade as the oenological practices; processes and product specifications in Title II; a Title IV dedicated to Geographical Indications of wine; Titles V and VI dedicated to Wine labelling and import certification and marketing requirements for wine; Titles VII – IX dedicated to cooperation, dispute settlement and final provisions as small quantities transit and territorial applications rules.

²⁶ Except for title IV - from article 14 to 19 – dedicated to spirit drinks, the 2003 Agreement is entirely dedicated to wine.

Canadian wine products²⁷.

Canadian competent authorities may apply one of the three measures listed in the annex, like as «*Limiting sales by a distillery or a winery on its premises to distilled spirits or wines produced there at prices no lower than those of the same distilled spirits or wines sold through outlets available for product of the Community*».

According to the list included in the 2003 Agreement, in Ontario and British Columbia only Canadian wines can be sold in private wine store outlets, moreover in Québec only provincially bottled wine without appellation of origin and without indication of varietal names can be sold in grocery stores.

The CETA Annex 30-B follows the assessment defined by the second-generation agreement, especially provisions connected to: wine production and trade (as the oenological practices), processes and product specifications, the Geographical Indications measures and wine labelling and import certification and marketing requirements. On the other side, CETA introduces in its section B relevant news on private stores outlets where access is limited to imported wines. As a matter of fact, the Annex limits the maximum number of off-site private wine store outlets authorized for up to 292 in Ontario and 60 in British Columbia²⁸, a privilege in past extended without any kind of limit.

Furthermore, art. 24 of CETA proposes to create equal and mutual benefits in market, as promoting equal conditions for imported and domestic wines related to certifications, widespread system, analysis or tests to be undertaken by the supplier or by the competent authorities, without in concrete this happening to an adequate degree.

Despite the provisions of the agreement, within and outside the provinces of British Columbia and Ontario, equal rights to wine products originated in the two Countries are not always put into practice.

Just to give an example, annual laboratory tests are required from all the wine suppliers in Canada, while the Liquor Control Board of Ontario

²⁷ This principle provincially means that local authority cannot use for the European Community products – now European Union - a treatment less favorable than the one reserved to Canadian or other countries ones

²⁸ CETA Annex 30-B replaces the Article 2. 2(b) of the 1989 Alcoholic Beverages Agreement, as amended by Annex VIII to the 2003 Wines and Spirit Drinks Agreement.

(LCBO) has provided free laboratory and quality assurance services for local wineries, the same services are not guaranteed to the EU producers, breaching the 2003 Wine Agreement and giving an economic advantage to domestic wine^{29 30}.

With the intention to prevent discriminations, Article F - article 4a of the 2003 Agreement prescribes to reserve to Canadian Authorities the competence to verify the existence of any discriminatory mark-up, cost of service, or other pricing measures applied by retailers

The Article, partially modified by Annex 30-B section D of CETA, also gives the competence to the Authorities to apply a differential cost of service if compared with the other Party products³¹. It is also essential that such difference would not be calculated on the basis of the value of the product and just in case *«it is no greater than the additional costs necessarily associated with the marketing of products of the other Party, taking into account additional costs resulting from, inter alia, delivery methods and frequency.»*

The Article also indicates that *«the cost of service differential shall be justified in line with standard accounting procedures by independent auditors on the basis of an audit completed on the request of the other Party»* within one year of a request being made and the Party provides response in writing within 60 days from the receipt of the request.

The possibility to maintain measures – allowed also under the 2003 Agreement – is the reason why bills as the 2006 Budget (Bill C-28) have been adopted.

²⁹ Annex 11 – LCBO Support for the Ontario Wine Industry and Annex 12 – How the LCBO support the Ontario Wine Industry.

³⁰ For more information on the LCBO's Three-Year Strategic Plan (2016/17 – 2018/19) to support Ontarian wine sector in check on <http://www.lcbo.com/content/lcbo/en/corporate-pages/about/media-centre/news/2016-06-13a.html>

³¹ Cost of Service Differential (COSD) represents the difference between the cost of two alternative decisions, or of a change in output level and here represents the cost that monopolies attribute to suppliers to cover the cost of the liquor board activities. CETA prohibited the use of product value as base to calculate the CODS but in concrete this discriminatory advantage to Canadian wines still exists. CETA introduced a more transparency system forcing competent Authorities to put public all the tariffs and creating a contact point able to respond to requests coming from the operators on the cost attribution as a matter of fact, CODS are applicable only after make available to public through publicly accessible means the applicable cost of service differential charges.

According to the above Bill C-28, the Federal Government implements the right to impose a taxation on wine not made from 100% Canadian-sourced grapes or other fruits proposing to the EU a compensation to the federal tax discrimination in the form of a tariff reduction for certain imported wines³². The compensation is not yet applicable and, even though the main CETA goal is to eliminate tariffs³³, a tax advantage for Canadian local wine still exists considering that no other measures have been taken on the Canadian side³⁴.

This advantage could be even more important considering the increase of the excise duties for alcoholic beverages that has been included in the Canadian federal government's 2017-2018 budget at 2% and that will increase annually by the inflation thanks to the escalator clause³⁵.

In fact, if according to the Free Trade Agreement, the consumers' price for a domestic wine bottle should be equal in all Canadian stores, but realistically some products' mark-ups will not be applied to the private outlet channel, resulting in additional margins for the local wine producer³⁶. These additional margins constitute a comparative and discriminatory advantage for the domestic wine industry which, in return, can invest more in marketing, advertisement and promotion of its products.

With the aim to eliminate direct or indirect tariffs, CETA also introduced a new article on blending requirements. According to the new rule, it is forbidden to both Parties to adopt or maintain any measures *«requiring that distilled spirits imported from the territory of the other Party for bottling be blended with any distilled spirits of the importing Party»*³⁷.

³² Referred to Annex I: excise act 2001, ss 135 in Comité Européen des Entreprises Vins report 26. 04. 2017 *«CEEV briefing for high mission in Canada/Discriminatory practices to EU wine in Canada»*.

³³ Annex 30-C CETA «Joint Declaration on Wines and Spirits».

³⁴ As a matter of fact, as reported in Comité Européen des Entreprises Vins report 26. 04. 2017 *«CEEV briefing for high mission in Canada/Discriminatory practices to EU wine in Canada»*, taxation on not 100% Canadian wine is still maintained while the compensatory part to the EU is not anymore valid in the context of an FTA between Canada and the EU giving a discriminatory advantage to Canadian wines.

³⁵ Referred to Annex I: excise act 2001, ss 135 in Comité Européen des Entreprises Vins report 26. 04. 2017 *«CEEV briefing for high mission in Canada/Discriminatory practices to EU wine in Canada»*.

³⁶ It important underline that private outlet channel is exclusively accessible to domestic wines.

³⁷ Annex 30-B of CETA at Section E add an Article 4b «Blending Requirements» to the 1989

4. – The dispute settlement system was created to find a resolution in case one of the Party fails to fulfil an obligation: CETA Section F of the Annex 30 B deletes the entire Title VIII of the 2003 Agreement dedicated to the Dispute Settlement³⁸.

CETA introduces a new dispute resolution approach according two aspects: for first, same rules are equal applies irrespective of the products involved and secondary the main goal is represented by achieve a common decision in order to solve conflicts and taking care of both Parties' needs.

The new system is made up of several stages in which the first step will always consist in a writing consultation procedure between Parties in order to find a common resolution and the idea to create a unique general system as main channel to solve disputes has been put in place with the creation of a Joint Committee where uniform rules facilitate management of dispute settlements and where decisions and recommendations are made according to a mutual consent procedure³⁹.

The function of the Joint Committee is extensively described by CETA article 26. 1 chapter twenty-nine⁴⁰ and its activity is based on the cooperation principle according to a mutually satisfactory resolution and a result that both Parties desired to achieve, by means of written consultations and mediation⁴¹.

Alcoholic Beverages Agreement, as amended by Annex VIII to the 2003 Wines and Spirit Drinks Agreement.

³⁸ CETA Annex 30 B section F letter e) entirely reforms the procedure deleting the 2003 Agreement title VIII on dispute settlement, as a matter of fact «Articles 29. 6 through 29. 10 of CETA are applied in the course of the procedure referred to in Article 9. 2 of the 2003 Wines and Spirit Drinks Agreement, they shall apply mutatis mutandis».

³⁹ The CETA Joint Committee is co-chaired by the Member of the European Commission responsible for Trade in one with the Minister for International Trade of Canada, designees from both Parties are accepted.

⁴⁰ According CETA article 26. 1 chapter twenty-nine the Joint Committee is responsible for «*all questions concerning trade and investment between the Parties and the implementation and application of this Agreement*» and it also could prevent problems and resolve disputes regarding the interpretation or application of the Agreement. According the CETA, the Joint Committee also could adopt «*the interpretations of the provisions of this Agreement, which shall be binding on tribunals established under (...) Chapter Twenty-Nine (Dispute Settlement)*».

⁴¹ Both Parties can choose a different forum according the rules defined in any other of their signed agreements; only one limit exists: once a dispute settlement proceeding has been initiated

According to the written consultation process rules, as defined by art. 29. 4 of CETA and similar to the one in 2003 Agreement, the requesting Party has to transmit a request to responding Party including all the relevant information as the identification of the specific measure at issue and the legal basis for the complaint.

A mediation procedure is also possible according article 29. 5 and the rules are set out in Annex 29-C of CETA.

In case no mutually resolution is achieved within forty-five days – or twenty-five in emergency cases – of the date of receipt of the request for consultations, it is possible to requesting the establishment of an arbitration panel composed by three arbitrators: this procedure included in CETA is close to the one described at the article 31 of 2003 Agreement with the main difference that it is considered just the last applicable option.

In case the Parties have reached a joint agreement, they both shall appoint the members of an arbitration panel that will decide in the specific case; on the contrary, if they are unable to select the arbitrators, either Party may request from the Chair of the CETA Joint Committee or the Chair's delegate the selection of three arbitrators from a specific list.

The Parties may reach agreement on a common solution at any time by just notifying their deal to both the CETA Joint Committee and the arbitration panel: after this notification, the proceedings shall be terminated.

A final panel report shall set out *«the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes»* and the responding Party shall take any measure necessary to immediately comply with it. This means that, no later than twenty days after the receipt of the final panel report, the responding Party shall inform the other Party and the CETA Joint Committee of its intentions in respect of compliance or the desire for a «reasonable period of extra-time» (extended by Parties) in case compliance is not immediately possible.

Mutual agreement and temporary remedies in case of non-compliance are accepted as suspending measures as been adopted.

under one agreement *«the Party shall not bring a claim seeking redress for the breach of the substantially equivalent obligation under the other agreement»*.

5. – The CETA Section C of Annex 30-B replaced the article 4 of the 1989 Alcoholic Beverages Agreement, as amended by Annex VIII to the 2003 Wines and Spirit Drinks Agreement.

The CETA Section here analyzed is dedicated to Commercial Treatment: the new article 4 reads in one with the article XVII of GATT, as replaced by the WTO rules, introduces the general principles of non-discriminatory treatment prescribed for governmental measures affecting imports or exports by private traders⁴².

The principle ensures that, in case of existence of private or public monopolies, they must always take decisions according commercial considerations in order to offer adequate opportunities to anyone who in future will operate in the same market.

The defined principle, replaced by CETA in the article 4 paragraph 1 Section C of Annex 30-B, is applied to the wine and spirits market in order to limit the anti-dumping effect relating to the existence of only one enterprise involved in the trade and sale of wines and spirit drinks on a given territory.

The reference to GATT, in one with the new CETA's article, guarantees that on internal market a strong position cannot be expand – using directly or indirectly methods – with the consequence to restrict the competition also in markets others than the one where the enterprise has a monopoly position.

The risk could be concrete especially in that Canadian provinces – as here analyzed – that support local enterprisers thanks to the creation of technical and not-technical barriers, even if accepted by CETA. In that case, it would not be strictly possible to speak of «monopoly»⁴³ but at the end a

⁴² To a more complete overview: Mastromatteo A. , *WTO and SOEs: Overview of Article XVII and related provisions of the GATT 1994*, Robert Schuman Centre for Advanced Studies Global Governance Programme (RSCAS) 2017/08.

⁴³ According the analysis operated by Mastromatteo (Mastromatteo A. , *WTO and SOEs: Overview of Article XVII and related provisions of the GATT 1994*, Robert Schuman Centre for Advanced Studies Global Governance Programme (RSCAS) 2017/08, p. 4) «*The absence of a clear definition of State trading was raised a number of times during the history of the GATT 1947, but only directly addressed during the Uruguay Round, one of the key outcomes of which was the Understanding on the Interpretation of Article XVII. The Understanding introduced the following "working definition" of STEs: «Governmental or non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise*

strong risk of market distortion exists if public supports are accepted, as a matter of fact, in that case could not be possible guarantee adequate competition opportunities the other Party's enterprises⁴⁴.

6. – The Geographical Indication⁴⁵ is a relevant topic in CETA⁴⁶. Refer to other authors for a deep analysis of the topic, here is relevant to focus the attention on GI in wine and spirit sector in the EU-Canada Agreement⁴⁷.

It is also relevant underline that in CETA, the EU asked to recognized

of which they influence through their purchases or sales the level or direction of imports or exports».

⁴⁴ Section C Annex 30-B of CETA.

⁴⁵ The EU provides GI protection for limited classes of products: wines, aromatic wines, spirits, foodstuffs and products derived from the soil. The rules are included in: Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (Regulation (EU) N° 1151/2012). Regarding wine, aromatized wine and spirits see Council Regulation (EEC) N° 1601/1991 of 10 June 1991 replaced by Regulation (EU) N° 251/2014 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine- based drinks and aromatized wine-product cocktails (Aromatized Wine Regulation); Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks (Spirits Regulation); Council Regulation (EC) No 1234/2007 of 22 October 2007 replaced by Regulation (EU) N° 1308/2013 establishing a common organization of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation). According to Article 5 paragraph 2 “*geographical indication*” (PGI) is a name identifying a product: (a) *originating in a specific place, region or country;* (b) *whose given quality, reputation or other characteristic is essentially attributable to its geographical origin;* and (c) *at least one of the production steps of which take place in the defined geographical area.* The essential feature of the EU system is that applicants must demonstrate positively that the characteristics, qualities or reputation of the product is essentially attributable to the geographic environment or origin. The proper geographic name can be registered if the link is proven. As a matter of fact, according to Article 7(1)(f) of Regulation 1151/2012. Applicants must provide details establishing: (i) *the link between the quality or characteristics of the product and the geographical environment referred to in Article 5(1);* or (ii) *where appropriate, the link between a given quality, the reputation or other characteristic of the product and the geographical origin referred to in Article 5(2).*

Once the Commission approves registration, the name is protected by the means of Article 13 of Regulation 1151/2012 that prohibits both direct and indirect commercial use or evocation of the registered name, including imitation, translation, or the use of terms as “like” or “style”.

On GPs in EU, among the others, refer to: Albisinni F. , *Quality and Origin between GIs and TMs: a Difficult Relationship*, in *Les marques vitivinicoles et appellations d'origine: Conflits, mimétismes et nouveaux paradigmes*, Georgopoulos T. (a cura di), Mare et Martin, 2019, p. 59; Borghi P. , *Passport Please! WTO, TRIPS, and the (serious?) Question of the Geographical Origin of*

GIs not as part of the EU agricultural policy but under the TRIPS Intellectual Property legal framework. As some authors underline, reasons behind exist and are connected to guarantee to GI products the stronger PI protection. A strategy to harness the GI monopoly's gains to subsidize European agricultural production⁴⁸.

Put the attention on wines and spirits, the Article D of Annex VIII of 2003 Agreement is dedicated to Geographical Indications and authorizes Canadian authorities not to list or sell wines or spirit drinks that incorrectly bear a geographical indication protected under Canadian law, preserving at

Foodstuffs, in *Studi in onore di Luigi Costato. Diritto alimentare, diritto Europeo*, Nappi P. et al. (a cura di), Jovene, 2014, pp. 77 ff. ; Ferrari M. , *La dimensione proprietaria delle indicazioni geografiche. Uno studio di diritto comparato*, Napoli, Editoriale scientifica, 2015; Lucifero N. , *Il territorio: rapporto tra regole del produrre e regole del vendere, in Il diritto alimentare tra comunicazione e sicurezza dei prodotti*, Germanò A. e Rook Basile E. (a cura di), Giappichelli, 2005, pp. 101 ff; Rubino V. , *La protezione delle denominazioni geografiche dei prodotti alimentari nell'Unione europea dopo il regolamento 1151/2012 UE*, in *Rivista di diritto alimentare*, it, num. 4, 2013, 4; Vittori M. , *The International Debate on Geographical Indications (GIs): The Point of View of the Global Coalition of GI Producers oriGIIn*, in *The Journal of World Intellectual Property*, 13, 2010, pp. 304 ff;

⁴⁶ Please, note that Geographical Indications (GIs) are considered a form of intellectual property (IP) (on it, Steve Stern: "Are GIs IP?", *European Intellectual Property Review*, 2007), as recognized in the 1883 Paris Convention. Today they have their fullest expression in the 1994 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) where are defined in Article 22. 1 as: *indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin*. Refer to Blakeney M. , *Proposals for the International Regulation of Geographical Indications*, in *The Journal of World Intellectual Property*, 4, 2001, pp. 629 ff; Tiberti E. , *Geographical indications and trademarks: space for coexistence as an equitable solution*, in *Rivista di diritto alimentare*, num. 3, 2013; Ibele E. W. , *The Nature and Function of Geographical Indications in Law*, in *Esey Journal of International Law and Trade Policy*, 2009, pp. 36 ff.

⁴⁷ On GI in CETA, among the others, refer to: Awad B. , Cadogan M. s. *CETA and the Future of Geographical Indications Protection in Canada*. CIGI Papers No. 131, 2017; Miribung G. , *Inquadramento delle indicazioni geografiche tra TRIPS e CETA: qualche osservazione*, in *Rivista di Diritto Alimentare*, num. 2, 2019; O'Connor B. , *Geographical Indications in CETA, the Comprehensive Economic and Trade Agreement between Canada and the EU*, in *Rivista di Diritto Alimentare*, num. 2, 2015, p. 61 ff; O'Connor, B. *The legal protection of GIs in TTIP: is there an alternative to the CETA Outcome*. Paper presented at the 145th EAAE Seminar, Parma, (2015); USTR, *United States and European Community reach agreement on trade in wine*. Washington, 2005.

⁴⁸ Hughes J. , *Champagne, Feta, and Bourbon - the Spirited Debate About Geographical Indications*, in *Hastings Law Journal*, 2006, p. 339.

the same time the geographical names of Community products.

Annexes 30-B in CETA is dedicated to expressly amend the 1989 and 2003 Agreements in wines and alcoholic beverages sector, except for the PGI provisions included in 2003 Agreement. For this reason, Article 10 and followings in 2003 Agreement and the articles included in the CETA subsection C are voted to guarantee a good protection to consumers and products originated in limited areas and included in lists attached.

A clear definition of geographical indication in general is provided by Article 20. 16 of CETA: GI is «*an indication which identifies an agricultural product or foodstuff as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin*».

Article 10⁴⁹, and *vice-versa* article 11⁵⁰, in the 2003 Agreement similarly defines GPI but limiting the description to wines and defines them as products protected because originating in a specific are of the Community (now Union) or Canada where «*a quality, reputation or other characteristic of the wine is essentially attributable to its geographical origin and is officially recognized and protected as a geographical indication within the meaning of Article 22(1) of the TRIPs Agreement*».

To limit and well define which wines are protected, a list of PGI wines is included in the Annex III A and B and Annex IV A and B, according to the indication of the article 15 of the Agreement and followings⁵¹. The list is flexible and, consequently, it is possible to implement the number of the products included according to the procedure established by the Agreement if necessary. The procedure is introduced with an official application by diplomatic note from one to the other Party and aims at guaranteeing

⁴⁹ Article 10 of 2003 Agreement is referred to the Community (now EU) wines listed in the Annex III(a).

⁵⁰ Article 11 of 2003 Agreement is referred to the Canadian wines.

⁵¹ Annex I Part A lists 173 EU GIs which must be protected in Canada “*according to the level of protection laid down in this Article 7*”. Considering that just a selection of GIs is protected in CETA, O’Connor B. , *Geographical Indications in CETA, the Comprehensive Economic and Trade Agreement between Canada and the EU*, in *Rivista di Diritto Alimentare*, num. 2, 2015, p. 3 asks “*why has the EU accepted that protection in Canada be limited to a subset of all EU GIs and that the level of protection be different even among this subset*”. He answers that “*an explanation that some names are considered generic in Canada while they are considered specific in the EU does not meet the facts*”.

quality, reputation and other characteristic attributable to a specific area and recognized in a specific product.

To ensure an effective protection, both the 2003 Agreement and CETA prohibit indications able to mislead consumers. It is forbidden to use homonymous geographical indications⁵² or to describe or present a *«wine not originating in the place indicated by the protected geographical indication in question, including translations, whether or not accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like, and whether or not the protected geographical indication is accompanied by a reference to the true place of origin»*⁵³.

The idea is to guarantee a stronger protection system to goods that have a value in relation to their production area; consequently, each Party *«shall provide for enforcement by administrative action, to the extent provided for by its law, to prohibit a person from manufacturing, preparing, packaging, labelling, selling or importing or advertising a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its origin.»*⁵⁴

Labelling of products and their presentation are also under the control of each Party in order to avoid false, misleading or deceptive message that could mislead consumers; to realize it, the Agreement forbids the use of translation or expressions such as *«kind», «type», «style», «imitation»* or similar to indicate products not PGI⁵⁵.

⁵² Article 20. 20. 2 of CETA included a specific procedure in the context of negotiation with third countries to guarantee an efficient protection from homonymous geographical indication. According the article: *«If a Party, in the context of negotiations with a third country, proposes to protect a geographical indication identifying a product originating in the third country, if that indication is homonymous with a geographical indication of the other Party listed in Annex 20-A and if that product falls within the product class specified in Annex 20- A for the homonymous geographical indication of the other Party, the other Party shall be informed and be given the opportunity to comment before the geographical indication becomes protected.»*

⁵³ Article 10. 2 of 2003 Agreement.

⁵⁴ Article 20. 20. 4 of CETA.

⁵⁵ Art. 10 referred to wine and art. 14 referred to spirits drinks of the 2004 Agreement between the European Community and Canadian on trade in wines and spirit drinks; Annex III A and B and Annex IV A and B, provide complete names lists where are identified European Community and Canadian wine and spirits drinks included their own quality, reputation and other characteristic essentially attributable to a specific area.

The general principles mentioned above are the same included in the EU labelling Regulation – the Reg. EU 1169/2011 – and oblige both Parties to provide information that are clear, complete and not creating erroneous impression about the character, composition, quality, origin or value of a wine.

To guarantee a high-level consumer protection is important focus the attention on the all-inclusive labelling definition provides by Regulation EU 1169/2011 – to read in one with the wine Regulation CE 607/2009 provisions on wine labelling and presentation at Chapter IV⁵⁶ – according to which labelling is «*any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a food and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such food*»⁵⁷.

The CETA main intention to create equal and mutual benefits in the market is also clear in the art. 24 of the 2003 Agreement where the import of wine originating in the Community is assimilated to the domestic one on certifications, widespread system, analysis or testing to be undertaken by the supplier or by the competent authorities. Furthermore, one of the negotiating successes for the EU on GIs in CETA is that names which were not protected before can now be protected.

Despite everything, it is undeniable that grey areas exist, especially considering each party's right to determine practical conditions under which homonymous indications could be different from each other and unequal conditions may be recognized in EU and in Canada.

⁵⁶ Regulation CE 607/2009 at Article 8 on «*Packaging in the demarcated geographical area*» that guarantees «*If a product specification indicates that packaging of the product must take place within the demarcated geographical area or in an area in the immediate proximity of the demarcated area in question, in accordance with a requirement referred to in Article 35(2)(b) of Regulation (EC) No 479/2008, justification for this requirement shall be given in respect of the product concerned.*» Regulation CE 607/2009 includes a section 4 dedicated to protection of designations of origin or geographical indications that has partially assumed as reference by CETA.

⁵⁷ Article 1 lett. j) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004.

7. – CETA Annex 30-C includes a «*Joint declaration on wine and spirits*»: at the end of the fifth year from the day of the introduction of the new agreement, both Parties may review the progress done. At the same time, the Annex guarantees the possibility to change the conditions of CETA eventually adopting most favorable treatment in case it has been decided in other international agreements later developed by Canada or EU and applying the «reciprocity rule».

According to the EU side, above provisions could be partially considered as a repetition of other parts of the CETA: in fact, Article C of Annex VIII in 2003 Agreement, as adopted by CETA, introduced the «*national most favored treatment principle*» to the EU products also referring to the WTO Agreement: this principle has not been modified by the last Agreement.

Annexes dedicated to wine sector CETA are concluded by a joint declaration included in Annex 30-D where Canada is pushed to start – soon as possible – new comprehensive bilateral agreement in order to establish a free trade area with the EU partners «*in accordance with the relevant WTO Agreement provisions on goods and services*».

8. – A new season of free trade agreements has been opened. Partnerships between several countries aim to eliminate tariffs and facilitate trade in goods and services.

After the collapse of the TTIP Agreement, the Comprehensive Economic and Trade Agreement (CETA) between Canada, of one side, and the European Union and its Member States, on the other, could represent the first step toward the creation of a free trade market with North American countries.

Among the incredible huge number of goods, services and relations managed by CETA and changed radically by it, only few pertain to the wine sector. As a matter of fact, the 2003 EC-Canadian agreement on trade in wines and spirit drinks is almost entirely incorporated by CETA, although with some important exceptions.

One is related to the introduction of a new system to solve disputes: in fact, old dispute resolution system is left aside in favor to a common system that guarantees standard procedures for all issues included under the umbrella of the new agreement.

The CETA system is based on the cooperation principle and has the

purposes of more transparency and the intention to eliminate tariffs, direct and indirect advantages to local products are important goals: in order to achieve these, both parties must remain committed.

The existence of criticisms is not excluded by a general favorable framework, including the closed number of off-site-private wine store outlets in Ontario and British Columbia that represent one of the most evident derogation to the principle of the equal treatment reserved to the two Parties wine products. Other measures locally adopted could not respect the principles included in the CETA: first and foremost, the principle of equivalence between local and foreign wines.

The co-existing of 2003 Agreement rules on PGI wines and the CETA provisions on food products seems to authorize an integrated interpretation in order to facilitate a stronger protection to products with characteristics essentially attributable to their geographical origin area. To this end, a protection to consumers from information that is misleading or deceptive or likely to create an erroneous impression regarding the origin of GPI is also guaranteed because it will not allow the use of expressions such as «*kind*», «*type*», «*style*», «*imitation*» or similar terms to indicate products not PGI or use the translation of the original name in a different language. Change conditions is always possible as agreed by both Parties, and the same with the option to modify the PGI products list.

To protect both Parties, the reference to the GATT rules, as replaced by the WTO, introduces the general principles of non-discriminatory treatment prescribed for governmental measures affecting imports or exports by private traders. The joint declaration at the Annex 30-C also guarantees to change CETA conditions and adopting the most favorable treatments eventually decided in future international agreements.

Abstract

Il saggio analizza l'accordo commerciale globale ed economico (CETA) tra l'Unione Europea e il Canada limitatamente al commercio di vino e spiriti. L'Accordo, avente l'obiettivo di rilanciare il commercio e aumentare la crescita del mercato e l'occupazione, nonostante sia stato ratificato dalla maggioranza dei Paesi dell'Unione, non è ancora stato ratificato dall'Italia. Si guarda, quindi, in modo critico alle modifiche che il CETA ha apportato all'accordo CE – Canada del 2003 volto a creare condizioni più favorevoli per lo sviluppo armonioso del commercio di vino e bevande spiritose sulla base dei principi di uguaglianza e vantaggio reciproco.

The paper analyzed the Annex dedicated to wine e spirits of the Comprehensive and Economic Trade Agreement (CETA) between EU and Canada. Ratified by the majority of the EU countries, it is not yet ratified by Italy. The adoption of CETA raises the question on how it has modified the original 2003 Agreement between the European Community and Canada to create more favorable conditions for the harmonious development of trade in wine and spirit drinks on the basis of equality and mutual benefit. However, it has been subject to criticism here analyzed.