

**There's rich rewards  
for doing business in  
the world's largest  
economy — if you  
can keep on top of  
the regulations.**

# EU blues

**By Pablo Fuchs**

**F**or in-house counsel who help their businesses manage expansion beyond Canada, few markets are as rewarding, or present as much of a challenge, as the European Union.

Consider this: the EU is the largest economy in the world: its 27 nations generated a combined gross domestic product of about \$18-trillion (U.S.) in 2011; the 501 million inhabitants include a formidable middle class made up of some of the wealthiest people on the planet. As an integrated block, the EU is Canada's second-largest trading partner in goods and services, next to the United States. And business activity between Canada and the EU is set to accelerate under the Comprehensive Economic and Trade Agreement (CETA). Negotiations on the wide-ranging free-trade agreement are expected to conclude later this year.

"The opportunities in Europe are enormous. It's one of the largest markets in the world and very sophisticated," says Celso Boscariol, partner with Watson Goepel Maledy and president of the Italian Chamber of Commerce in Vancouver. "Culturally, it's one of the easiest markets for Canadians to penetrate and we have natural linkages going back centuries that facilitate entry."

But while opportunities abound, so do risks — especially for companies that don't understand they can't operate in the EU like they do in Canada. It's still a foreign market, even if the cultures and economies seem familiar. The EU's complicated regulatory structure adds another layer of complexity. Companies must comply with a multitude of EU regulations and local laws governing everything from the regulation of safe use of chemicals to data protection and uniform consumer rights.



Celso Boscarol  
Partner  
Watson Goepel Maledy  
Vancouver





**Emilie Bourgeois**  
On secondment  
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Agrium Europe  
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“A major issue of doing business in Europe is that Canadian companies don’t treat it as if they’re going to Asia or some other foreign market,” says Daniel Desjardins, general counsel of Montreal-based Bombardier Inc. which has its railway equipment and services division, Bombardier Transportation, headquartered in Berlin.

“You have to do your homework, and don’t treat Europe as one country and culture,” he said in an interview. “It’s one economic zone, but it has a diversity of countries and cultures that need to be understood as well as ample regulations to be aware of. Setting up businesses in Italy and Poland, for example, are two different worlds.”

A number of leading Canadian companies are already well-established in Europe, attracted by the educated workforce and the base it offers to build a global business. “If you look at the skill of the labour force and the expertise of our European engineers, that’s knowledge we export around the world,” Desjardins says. “And our transportation division in Berlin not only serves Europe, but the rest of the world as well.”

For Calgary-based Agrium Inc., whose European division is one of the largest fertilizer distributors in the region, the EU is an

“amazing market in which to sell and be present,” says Emilie Bourgeois, a private practice lawyer seconded as in-house counsel with Agrium Europe in Brussels. “The work force is indeed very skilled and many employees speak two or even three languages. They also have a tremendous capacity to adapt.”

An EU presence also has opened doors for Florenceville, N.B.-based McCain Foods Limited, which has manufacturing facilities in Belgium, France, the Netherlands and Poland along with divisions in 13 other European countries. “Europe is a place from which a lot of other markets open up, including Africa, the Middle East, Eastern Europe and Russia,” says Christa Wessel, the company’s chief legal officer in Toronto. Furthermore, it’s a prime location in which to produce, she adds: “There are parts of Belgium and northwestern Europe that are prime potato-growing regions.

and provides clear-cut uniformity [across Europe],” says Bourgeois. It’s a single law that requires manufacturers to register with one agency in Helsinki that sets uniform rules on packaging and labelling and is fully applicable in all EU member states. But the firm still must navigate a regulatory maze of rules and regulations in other key areas.

“The EU is a single market that’s aiming to uniform-ize all laws, but we’re not yet there,” she says. “While we have a uniform system in REACH, a single set of data protection laws, a common trade policy, competition legislation, certain uniformized consumer rights, there are local, national laws when it comes to labour and intellectual property or administrative requirements, for instance.” She notes that when Agrium purchased CerealToscana S.A., a fertilizer distribution company in Italy, and

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James Klotz, Co-chair, International transactions group, Miller Thomson, Toronto

And from a resource perspective, this is really valuable because we have a number of plants that export to other markets, such as South America, as it’s very cost-effective.”

All of these opportunities come with challenges, especially when it comes to keeping up with regulations. Europe has an “overabundance of regulations that keep changing,” Desjardins points out, with a profound impact on business. For example, the EU’s Emissions Trading Scheme (ETS) has created numerous obligations for commercial and business aircraft operators and places a cap on their CO2 emissions, which in turn has posed significant challenges for Bombardier and many of its clients.

The transportation conglomerate also must contend with the EU’s regulation on Registration, Evaluation, Authorization and Restriction of Chemicals (REACH). The provisions, which became law on June 1, 2007 and consist of thousands of pages, are being phased in over 11 years — “and we’re all struggling to understand it and master it,” Desjardins says.

Companies with manufacturing capabilities or that sell environmentally sensitive goods must stay on top of a plethora of environmental regulation. Sometimes, that can be difficult. “When we manufacture a train, it takes two to three years [to complete], but regulations could change around you in the meantime,” says Desjardins. “Also, in our market of transportation and aerospace, there’s an abundance of regulations not only at the EU level, but at the national and local levels as well, and we have to navigate through all of them.”

For Agrium’s European division, REACH is “an advantage

its Romanian subsidiary, Agroport, last year, she was surprised by what was required to have official Italian documents recognized by the Belgian authorities — and vice versa.

Dealing with multiple layers of regulations requires a disciplined approach. “From an infrastructure perspective, there are some things that are covered by our legal team in the European head office and other things by the legal teams in each individual country. It’s a hybrid of the two,” says Wessel of McCain’s arrangement. “And because there’s no law firm that’s in all European countries, we’ve had to create a quilt of law firms to rely on.”

### Think local

Some advance preparation can help firms avoid the pitfalls associated with expanding to the EU or acquiring a company there.

“Canadian companies tend to assume — even though there’s a language barrier — that Europe is a very familiar market and [as a result], they don’t do their homework on the regulatory environment,” says James Klotz, partner and co-chair of Miller Thomson’s international business transactions group in Toronto. “You can do a lot of business in Europe before tripping over the laws; it’s not that uncommon to see. It’s a different marketplace and like any foreign market, you need a significant amount of intelligence to figure out how it works.”

Some recommend the approach taken by many European companies. “Hire someone who’s connected and understands the local environment and is prepared to build a team to work there,” says Jason Langrish, executive director of the Canada Europe

Roundtable for Business in Toronto. “When it comes to Europe, you must work with locals. It’s not the law like it is in China, but it might as well be.”

That doesn’t mean Canadian in-house counsel should stay home and entrust everything to a foreign-based team, adds Klotz: “Get on a plane, go there, meet with local counsel and business advisers and make sure it’s a market that’s really understood. The biggest mistake is when business is done from afar.”

Despite the challenges, the introduction of CETA is expected to entice more Canadian companies to do business in Europe. “Many benefits will arise from the reduction or elimination of tariff

barriers but, more importantly, non-tariff barriers,” says Boscariol. “[For instance, CETA] will put Canadian companies on a more even playing field to bid on public contracts in Europe.”

Although unions, labour rights groups and other non-governmental organizations in Canada have questioned CETA’s merits, there are important reasons to implement it, Langrish says. “The purpose [of CETA] is not to open up the market, but to provide a modern, relevant architecture to an already existing body of commercial exchange,” he says. “[For example], the implementation of CETA will see the creation of a legally binding dispute-resolution mechanism, which is very important.”

## Les blues de l’Union européenne

**Faire des affaires avec le marché commun européen peut être très valorisant... à condition d’en maîtriser les règles du jeu.**

**L**e marché de l’Union européenne est un des marchés les plus gratifiants pour les conseillers juridiques d’entreprises dont la croissance s’étend au-delà des frontières canadiennes. Mais cet immense marché comporte également un lot de défis à relever pour ces avocats.

L’UE est la plus grande puissance économique au monde, notamment grâce au produit intérieur brut d’environ 18 billions de dollars US générés en 2011 par les 27 pays membres. De plus, l’UE totalise une population de plus de 500 millions d’habitants et on retrouve parmi sa classe moyenne les individus les plus fortunés sur la planète. Il n’est donc pas surprenant qu’après les États-Unis, l’UE est le plus grand partenaire commercial du Canada. Et il y a fort à parier que la signature de l’Accord économique et commercial global entre le Canada et l’Union européenne (AECG) prévue au cours des prochains mois ne fera qu’intensifier les échanges entre les deux partenaires.

Toutefois, malgré les liens culturels ou historiques qui unissent de nombreux Canadiens à l’Europe, le marché du bloc européen reste un marché étranger. Les compagnies qui souhaitent y opérer doivent être conscientes de la complexité de la réglementation régissant les membres de l’Union et se renseigner sur les nombreuses

lois locales qu’il faut aussi respecter.

Daniel Desjardins, vice-président aux affaires juridiques de Bombardier Inc. à Montréal, croit que la difficulté première rencontrée par les compagnies canadiennes qui souhaitent développer le marché européen découle d’un manque de préparation. M<sup>e</sup> Desjardins conseille aux entreprises de bien faire leurs devoirs et de ne pas voir l’Europe comme une seule entité, mais plutôt de se renseigner sur les particularités propres à chaque juridiction.

La main-d’œuvre qualifiée et les opportunités de développement offertes par l’UE font partie des avantages qui attirent les entreprises sur ce territoire. L’entreprise McCain Foods ltée du Nouveau-Brunswick a des manufactures dans plus de 13 pays européens, dont la Belgique, les Pays-Bas et la Pologne. M<sup>e</sup> Christa Wessel, avocate en chef de l’entreprise, croit qu’une présence en Europe facilite l’accès à d’autres marchés comme l’Afrique, le Moyen-Orient ou la Russie.

Bien que les avantages d’un marché aussi vaste que l’UE soient considérables pour les entreprises canadiennes, la complexité de la réglementation représente un défi de taille pour les conseillers juridiques. En effet, de nombreux textes législatifs régissent des aspects du commerce les plus diversifiés, allant de l’utilisation sécuritaire

des produits chimiques à la protection des droits des consommateurs. M<sup>e</sup> Desjardins donne l’exemple du Système communautaire d’échange de quotas d’émission (SCEQE) qui vise à réduire les émissions de CO<sub>2</sub>, mais qui impose de nouvelles obligations à Bombardier et ses clients transporteurs. La compagnie canadienne doit aussi se conformer au Règlement sur l’enregistrement, l’évaluation et l’autorisation des produits chimiques (REACH) adopté par l’Union européenne en 2007, un recueil complexe de lois qui comporte des milliers de dispositions à respecter.

Certains avocats croient que REACH a l’avantage d’uniformiser la réglementation quant à l’emballage et à l’étiquetage des produits à travers le continent européen, puisque ce système s’applique à tous les membres de l’Union. Toutefois, l’uniformité des lois ne touche que très peu de secteurs puisque des lois locales régissent encore plusieurs domaines tels que le droit du travail, la propriété intellectuelle ou le droit administratif. Naviguer à travers plusieurs paliers législatifs nécessite bien sur une approche disciplinée, mais également une équipe diversifiée qui maîtrise les réglementations applicables sur chacun des territoires.

Certains préconisent l’approche adoptée par plusieurs compagnies européennes :



Furthermore, “it’s not inconceivable that [CETA] will give Canada more leverage in our relationship with the United States,” Langrish says, because the U.S. is not yet negotiating such an agreement with the EU. “Let’s face it, it’s been a one-way street for a long time, and we’ve had too many eggs in one basket.”

According to a study released by Miller Thomson in early 2011, more than 90 per cent of 200 Canadian business executives surveyed believe Canada has benefited from existing free-trade agreements. As well, 60 per cent say that establishing free trade with the EU should be a government priority.

“There’s a theory that free trade causes all boats to rise, and I believe that,” says Klotz. “The less red tape and other barriers to the flow of goods and services, the more such goods and services will flow.”

Few markets are the size, heft and maturity of the EU and as barriers to trade and bilateral business continue to fall by the wayside, this market will become more and more attractive to Canadian businesses. And corporate counsel, who can help their firms get a foothold in that market by navigating the rough regulatory waters, have a crucial role to play to ensure Canadian companies take advantage of this growing opportunity. ■

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**Jason Langrish**  
Executive director  
Canada Europe Roundtable  
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Toronto



embaucher quelqu’un qui comprend l’environnement local, qui a un bon réseau et qui est prêt à mettre sur pieds une équipe qui travaillera sur place. Jason Langrish, directeur général du Forum sur le commerce Canada-Europe à Toronto, croit qu’il est essentiel de travailler avec du personnel local. M<sup>c</sup> James Klotz de Miller Thomson est du même avis et encourage les conseillers juridiques canadiens à se rendre sur place afin de rencontrer les experts et en apprendre le maximum sur le marché.

Malgré ces défis, on prévoit que

l’adoption prochaine de l’AECG augmentera le nombre d’entreprises canadiennes faisant affaire en Europe. La réduction ou l’élimination des barrières tarifaires apporteront d’importants avantages pour ces compagnies qui auront aussi accès aux marchés publics européens. M<sup>c</sup> Langrish précise que le but de l’AECG n’est pas de libéraliser complètement les échanges entre le Canada et l’Europe, mais plutôt de fournir un cadre législatif clair, qui déterminera les règles du jeu, par exemple avec l’adoption d’un mécanisme de règlement des différends contraignant pour tous les

états signataires.

La taille et la maturité du marché l’Union européenne représentent un potentiel exceptionnel pour les entreprises canadiennes et la libéralisation du commerce découlant de l’AECG augmentera sans doute les échanges du Canada envers le géant européen. Il revient aux conseillers juridiques de faire en sorte que les entreprises qu’ils représentent puissent bénéficier en toute quiétude de ces nouvelles opportunités. ■

~ Stéphanie Riccio