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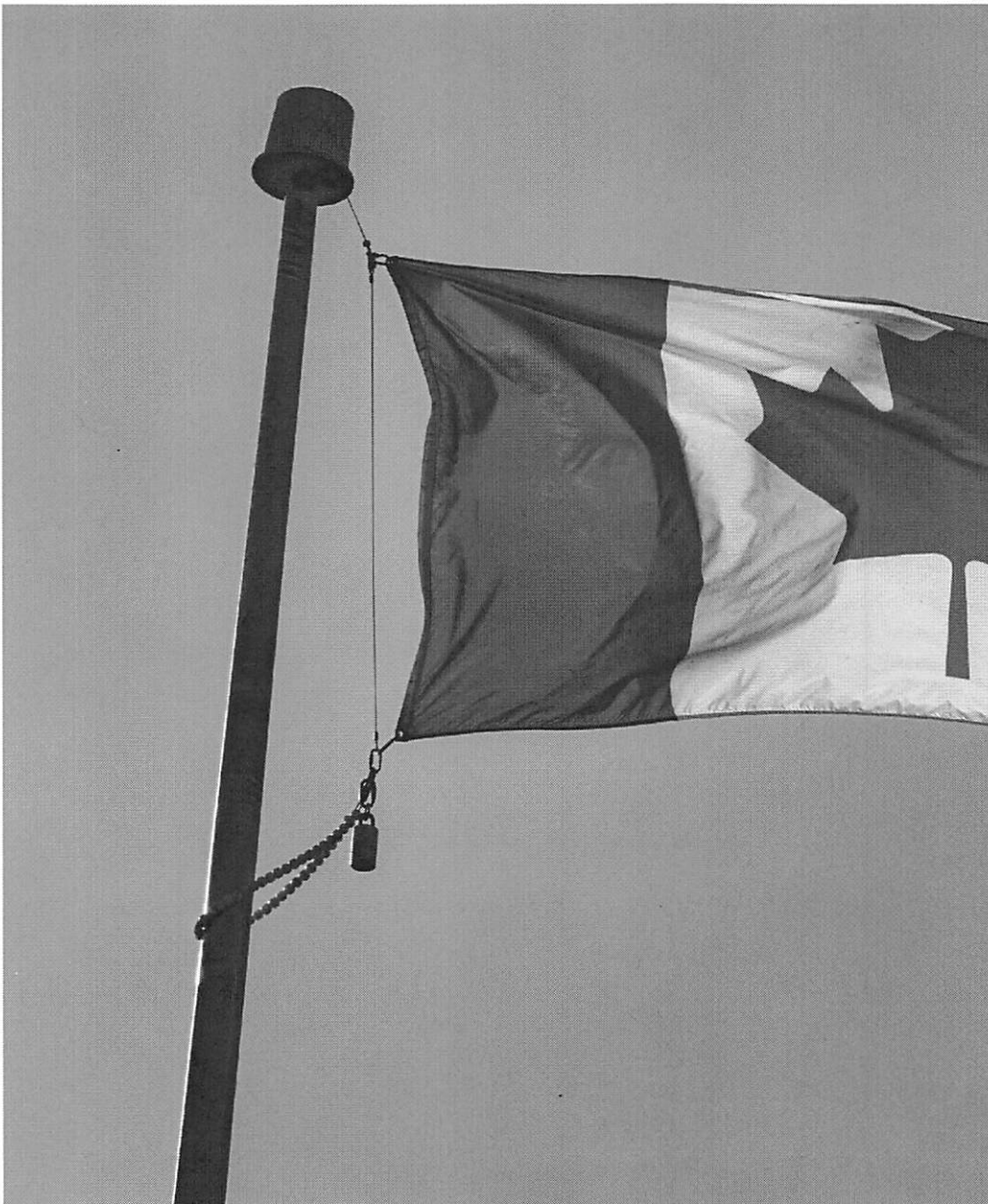
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# CETA: the EU-Canada free trade agreement

By Dominic Webb

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## Summary

The Comprehensive Economic and Trade Agreement (CETA) is a free trade agreement between the EU and Canada. The CETA talks started in 2009 and were completed in 2014. The agreement was signed on 30 October 2016. Signing of the agreement was delayed by a few days due to objections from the Walloon Parliament. Signature of the agreement does not mean it comes into force immediately. The next step is consideration of the agreement by the European Parliament. Provided the European Parliament gives its consent, much (but not all) of CETA may come into force provisionally. CETA could come into force provisionally in Spring 2017.

CETA removes all tariffs on industrial products traded between the EU and Canada. Most will be removed when the agreement comes into force. All will be removed within seven years. There is substantial liberalisation of trade in agricultural products. EU businesses will be allowed to bid for public procurement contracts in Canada.

The European Commission has put CETA forward as a “mixed agreement” while maintaining its strict legal view that CETA is an “EU-only” agreement. As a mixed agreement, CETA must be ratified by each EU Member State and must receive the European Parliament’s consent. In the UK, the agreement must be laid before Parliament for a period of 21 sitting days. The agreement can only be ratified if the 21 day period has passed without either House having resolved that it should not be ratified. In the event of such a resolution by the Commons, a further period of 21 days is triggered during which the Commons can again raise objections. The European Scrutiny Committee has recommended that there be a debate on CETA on the Floor of the House of Commons. CETA will be debated in European Committee B on Monday 6 February 2017. The House of Commons International Trade Committee has also started an inquiry into CETA.

The agreement may be provisionally implemented after consent from the European Parliament but before ratification by Member States. The Commission favours this approach. Only those areas of the agreement falling within EU competence may be provisionally applied. Critics argue that this could cover most of CETA. The Commission has said that the controversial Investment Court System provisions will not be provisionally applied. They will not, therefore, come into force unless CETA is ratified by Member States.

Those in favour of CETA argue that it will boost trade between the EU and Canada. CETA has been described by the European Commission as “a milestone in European trade policy” and “the most ambitious trade agreement that the EU has ever concluded.” The European Commission argues that criticisms of the investment provisions are unfounded, claiming that CETA protects governments’ right to regulate and that the proposed Investment Court System is a fairer and more transparent replacement for the widely criticised Investor State Dispute Settlement (ISDS) provisions.

Critics argue that the agreement is unduly favourable to business and may lead to a lowering of regulatory standards. Opponents of CETA remain unconvinced by the reforms to the investment provisions, arguing that these give foreign investors special privileges and may deter governments from legislating in the public interest for fear of litigation. CETA is also seen by some as a way of bringing in elements of TTIP through the back door. There have also been criticisms of the process of ratifying trade deals – in particular that CETA may be subject to “provisional application” – ie before parliaments in EU Member States have had a chance to ratify it.

While the UK remains in the EU, it will be subject to CETA's provisions once it comes into force. The precise date of Brexit is not yet known but given the time needed to ratify CETA in all EU Member States (assuming it is ratified), there is a possibility that the UK will have left the EU by the time CETA comes fully into force. While the situation is not entirely clear, the general view is that the UK would need to renegotiate its trade agreements with non-EU countries after Brexit. It has been suggested that if Brexit occurred after full ratification of CETA, the UK could be bound by its investment provisions for 20 years. The European Scrutiny Committee has asked the Government to provide more detail on how Brexit will affect CETA.

# 1. Background

The Comprehensive Economic and Trade Agreement (CETA) is a trade deal between the EU and Canada. The European Commission has described CETA as “a milestone in European trade policy” and “the most ambitious trade agreement that the EU has ever concluded.”<sup>1</sup>

UK exports to Canada were worth £7.3 billion in 2015 while imports amounted to £7.4 billion. Canada accounted for 1.4% of UK exports of goods and services and also 1.4% of imports. Services accounted for around 45% of UK exports to Canada while UK imports were predominantly goods. The UK had an overall trade deficit with Canada of £0.1 billion in 2015. A surplus of £1.9 billion on trade in services was offset by a deficit of £2.0 billion on trade in goods.

Negotiations for this treaty began in May 2009 and were completed in August 2014. In July 2016, the European Commission proposed that the agreement be concluded and signed.<sup>2</sup> CETA was signed on 30 October 2016. Its signature was delayed by a few days by objections from the Walloon Parliament. The EU and Canada have also signed a “Joint Interpretative Instrument” on CETA. This document, which will have legal force, clarifies what has been agreed by Canada and the EU in a number of controversial areas such as the Investment Court System, governments’ right to regulate, and labour and environmental standards.<sup>3</sup> Signature of the agreement does not mean that CETA comes into force immediately.<sup>4</sup>

It has been reported that the European Commission and Canada want the agreement to come into force in 2017 (see section 4 on ratification process and “provisional application”).<sup>5</sup>

The agreement will remove the vast majority of customs duties as well as removing other barriers to trade. It aims to boost trade, strengthen economic relations and create jobs. The UK Government considers that as a result of CETA, UK exports to Canada will increase by 29% and Canadian exports to the UK will increase by 15%, and in the long run, the benefit to the UK economy will be of the order of £1.3 billion per annum.<sup>6</sup> The European Commission claim that it will lead to a yearly €12 billion increase in EU GDP.<sup>7</sup> These estimates have been disputed.<sup>8</sup>

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<sup>1</sup> European Commission Press Release, [European Commission proposes signature and conclusion of EU-Canada trade deal](#), 5 July 2016

<sup>2</sup> European Commission Press Release, [European Commission proposes signature and conclusion of EU-Canada trade deal](#), 5 July 2016

<sup>3</sup> [The Joint Interpretative Instrument](#)

<sup>4</sup> “Signature signals the intention to conclude, it does not conclude the agreement as such”, European Parliament Research Service Briefing, [A guide to EU procedures for the conclusion of international trade agreements](#), October 2016, p6

<sup>5</sup> European Parliament Research Service, [Is CETA a mixed agreement?](#) 1 July 2016

<sup>6</sup> [PQ 20279](#) 7 January 2016. It is not clear what “the long run” refers to, but £1.3 billion is around 0.07% of 2015 GDP or around £20 per head.

<sup>7</sup> European Commission, [CETA](#)

<sup>8</sup> See Global Justice Now, [CETA: TTIP's little brother](#), September 2015

In a speech at the European Parliament in December 2015, Cecilia Malmström, the EU Trade Commissioner, set out some of the advantages of CETA as follows:

- CETA is an agreement with a major economic player. In economic terms Canada is as big as Russia. It's bigger than Spain. It's bigger than Sweden, Belgium, Austria and the Czech Republic combined. It's therefore a vital part of the platform of agreements we are building to make sure the EU is properly connected to the global economy.
- It's also a highly ambitious agreement. In many areas it does more to remove barriers to economic opportunity for European workers, consumers and entrepreneurs than any other EU free trade agreement so far. Not only on tariff removal but also on public procurement, services or geographical indications.
- And CETA is a significant step forward in our efforts to shape the future of the global economy, inspired by European values. It's therefore consistent with the approach we have adopted in our new strategy in October.  
[...]
- Overall we estimate tariff savings for EU exporters of around 470 million euro a year for industrial goods. And that's particularly important since our competitors in the US don't have to pay those duties, as they already have an agreement with Canada. So CETA is about levelling the playing field for the EU.<sup>9</sup>

Until recently, CETA has received less interest than the Transatlantic Trade and Investment Partnership (TTIP) – a free trade agreement currently being negotiated between the EU and US.<sup>10</sup> However, critics of these trade agreements have pointed to parallels between them and argue that CETA could set a dangerous precedent for TTIP.<sup>11</sup>

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<sup>9</sup> Cecilia Malmström CETA Europe's Next Step, Speech at European Parliament, 9 December 2015

<sup>10</sup> There is more information on TTIP in a Library note.

<sup>11</sup> Pia Eberhardt, The zombie ISDS, March 2016, p17

## 2. Details of the agreement

CETA removes customs duties on trade in industrial products between the EU and Canada. Most will be removed as soon as the agreement comes into force. Others will be removed gradually (within 3, 5 or 7 years). There is substantial elimination of customs duties on agricultural products. There are some exceptions: trade in poultry and eggs is not being liberalised on either side and restrictions remain on trade in some other agricultural products.<sup>12</sup>

EU companies will be permitted to bid for public procurement contracts in Canada, including those let by provincial governments. According to the European Commission “European businesses will be the first foreign companies to get that level of access to Canadian public procurement markets.”<sup>13</sup>

CETA provides for a Regulatory Co-operation Forum which will allow the exchange of relevant information between EU and Canadian regulators and help identify areas where they could co-operate.

CETA contains provisions relating to investment. These are one of the most controversial aspects of the agreement (see section 3.1 below). According to the European Commission website:

CETA removes and alleviates barriers for investors to enter the Canadian market. Moreover, the agreement ensures that all European investors in Canada are treated equally and fairly. To improve the investment climate and offer more certainty to all investors, the EU and Canada have committed to key principles, such as non-discrimination between domestic and foreign investors. Canada and EU also commit that they will not impose any new restrictions on foreign shareholding.<sup>14</sup>

Another area covered by the agreement is trade in services. The European Commission estimates that approximately 50% of the gains on the EU side from CETA come from the removal of barriers to trade in services. According to the Commission, the agreement improves access to a number of service sector markets in Canada including financial services, telecoms, energy and maritime transport. The agreement also covers future work between Canada and the EU on mutual recognition of qualifications in regulated professions. The liberalisation of services is another of the most controversial areas of the agreement and is discussed more in section 3.2 below.

According to the Commission, CETA will protect “geographical indications” ie European foods which are associated with a specific area or region. The Commission website says:

CETA recognises the special status and offers protection on the Canadian market to numerous European agricultural products from a specific geographical origin. The use of geographical

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<sup>12</sup> For more detail on the provisions relating to agriculture, see European Parliament Research Service, Agriculture in the EU-Canada Comprehensive Economic and Trade Agreement (CETA), July 2016

<sup>13</sup> European Commission website, CETA

<sup>14</sup> European Commission website, CETA

indications (GIs) such as *Grana Padano*, *Roquefort*, *Elia Kalamatas Olives* or *Aceto balsamico di Modena* will be reserved in Canada to products imported from European regions where they traditionally come from.<sup>15</sup>

Annex 20-A of CETA contains a list of these products. There are no UK products on the list.<sup>16</sup>

Full details of the measures contained in CETA can be found on the European Commission's [website](#).

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<sup>15</sup> European Commission website, [CETA](#)

<sup>16</sup> [CETA Annex 20-A](#)



## 3. Controversial aspects

### 3.1 Investor protection

CETA contains controversial measures relating to investment. These were originally known as ISDS (Investor State Dispute Settlement) provisions. In response to concerns about ISDS, the European Commission and the Canadian Government announced, in February 2016, that they had agreed a new approach to investment protection and dispute settlement in CETA. This new approach, known as ICS (Investment Court System) is based on the EU's proposals in this area, made in the TTIP negotiations in November 2015.

The Commission has stressed its view that these arrangements guarantee governments' right to regulate in the public interest. The Commission has said that the new system ensures "a high level of protection for investors while fully preserving the right of governments to regulate and pursue legitimate public policy objectives such as the protection of health, safety or the environment."<sup>17</sup> The reforms also introduce an independent investment court system and include measures to introduce more transparency into dispute proceedings, and prevent conflicts of interest on the part of Tribunal members.

In a joint statement, Cecilia Malmström and Chrystia Freeland (Canadian Minister of International Trade) said:

As part of the legal review, modifications were made to the Investment Chapter, further to discussions between EU and Canadian officials. With these modifications, Canada and the EU will strengthen the provisions on governments' right to regulate; move to a permanent, transparent, and institutionalised dispute settlement tribunal; revise the process for the selection of tribunal members, who will adjudicate investor claims; set out more detailed commitments on ethics for all tribunal members; and agree to an appeal system.

We have responded to Canadians, EU citizens, and businesses with a fairer, more transparent, system.

These modifications reflect our desire to reform investment protection and dispute resolution provisions and to continue working together to improve the process, including working with other trading partners to pursue the establishment of a multilateral investment tribunal, a project to which the EU and Canada are firmly committed.<sup>18</sup>

Critics of the investment provisions say that they are still unduly favourable to multinational companies and argue that the change from ISDS to ICS does little to address the problem of foreign companies having recourse to special tribunals, outside the domestic legal system. For example, Natacha Cingotti, trade campaigner for Friends of the Earth Europe, said:

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<sup>17</sup> European Commission, Investment provisions in the EU-Canada free trade agreement (CETA), February 2016

<sup>18</sup> Canada-EU Comprehensive Economic and Trade Agreement (CETA), Joint statement by Cecilia Malmström and Chrystia Freeland, 29 February 2016. The Commission has published a factsheet on ISDS and CETA.

Today's proposals for CETA offer no significant improvement to the dangerous agreement and should fool no-one. The Investment Court System is nothing but private arbitration under another name, keeping VIP rights for foreign investors fully alive and allowing them to sideline the legal system in Europe."

We urge governments to listen to the millions of people across Europe who are calling for a full rejection of TTIP and CETA. In its current form, CETA should not be signed.<sup>19</sup>

The main concern raised is that the investment provisions would allow foreign companies to sue governments in special tribunals outside the domestic legal system, if they have been adversely affected by changes in public policy. Critics argue that this constrains government action in the public interest in areas such as public health or environmental policy. There are also concerns that as only investors can bring claims, the system is biased in their favour: it is argued that those involved have an incentive to find in favour of the investor as this generates more work for the judges and lawyers involved.

Similar provisions in TTIP are highly controversial and opponents of these trade deals see CETA as setting a dangerous precedent for TTIP. They also argue that CETA is a "Trojan horse" whereby US companies could make claims against EU policies using Canadian subsidiaries.<sup>20</sup>

A paper by Corporate Europe Observatory (and others) summed up the objections to ICS as follows:

it would empower thousands of companies to circumvent national legal systems and sue governments in parallel tribunals if laws and regulations undercut their ability to make money. It would pave the way for billions in taxpayer money being paid out to big business. It could curtail desirable policymaking to protect people and the planet. And it threatens to lock EU member states forever into the injustices of the ISDS regime.<sup>21</sup>

Over 100 legal academics published a statement setting out their objections to the investment provisions of CETA and TTIP.<sup>22</sup>

Concerns have been raised that the UK could be tied into CETA's investment provisions for up to 20 years:

Campaign group Global Justice Now have also released an expert opinion on CETA and Brexit which argues that if the UK doesn't formally leave the EU before CETA is ratified, then it would be tied into the trade deal for a period of twenty years after announcing any intention to leave the deal.<sup>23</sup>

Article 30.9 paragraph 2 allows for the investment provisions to be effective for 20 years after the termination of the agreement:

Notwithstanding paragraph 1, in the event that this Agreement is terminated, the provisions of Chapter Eight (Investment) shall

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<sup>19</sup> Friends of the Earth Europe, [Dangerous CETA deal must be rejected](#), 29 February 2016

<sup>20</sup> Pia Eberhardt, [The zombie ISDS](#), March 2016, p29

<sup>21</sup> Pia Eberhardt, [The zombie ISDS](#), March 2016, p5

<sup>22</sup> Stop TTIP, [Legal Statement on Investment Protection in TTIP and CETA](#), 17 October 2016

<sup>23</sup> Global Justice Now, [EU accused of trying to push through 'toxic' trade deal ahead of Brexit](#), 4 July 2016

continue to be effective for a period of 20 years after the date of termination of this Agreement in respect of investments made before that date.<sup>24</sup>

## 3.2 Trade in services

CETA is the first trade agreement where the EU has agreed to open up its services markets using the “negative list” approach. This means that all service markets are liberalised except those explicitly excluded. Some service sectors were excluded from the outset by the EU in the negotiating mandate given to the Commission.<sup>25</sup> These included “audio-visual and other cultural services” as well as “services supplied in the exercise of governmental authority”.<sup>26</sup> According to a note prepared for the European Parliament, public services excluded from CETA include health, education and other social services.<sup>27</sup>

A briefing by the trade union Unison explains its concerns in this area as follows:

Whilst the EU has opened up services in other trade agreements in the past, it always explicitly excluded public services from the beginning by using what is known as the ‘positive list’. However, negotiators have decided to use the so-called ‘negative list’ approach for TTIP, CETA and TiSA. This means that all services are open to market liberalisation unless a specific reservation is entered which has to be done on a service-by-service basis, and in some cases, on a country-by-country basis. Experience from other trade agreements shows that the negative list approach leads to the creeping liberalisation of public services as negotiators have failed to include sufficiently watertight exclusions.

Using a negative list also means a ‘ratchet-clause’ can be included in relation to market liberalisation. This means that even if a reservation is included in a treaty for a particular service, if a country then decides to liberalise the market for this service they are then obliged to maintain that level of market liberalisation and cannot reverse it. A ‘ratchet-clause’ locks in liberalisation and privatisation and would prevent bringing services back in-house.

The EU-Canada agreement (CETA) is now public and we know the European Union has negotiated exclusions for public services, including health, education and social services, from market liberalisation. However, CETA does include a ratchet clause and importantly there is no exclusion for public services from the controversial investment chapter.<sup>28</sup>

There are criticisms of CETA in other areas. For example, Nick Dearden of Global Justice Now, argued in an article in the Guardian that trade deals such as CETA and TTIP were a means for big business to increase their power over society. He said:

The whole purpose of Ceta is to reduce regulation on business, the idea being that it will make it easier to export. But it will do

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<sup>24</sup> [CETA text](#)

<sup>25</sup> [CETA negotiating mandate](#), 2009

<sup>26</sup> As defined by Article I-3 of GATS. For more on this, see [https://www.wto.org/english/tratop\\_e/serv\\_e/gatsqa\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm)

<sup>27</sup> European Parliament, [Negotiations on the EU-Canada Comprehensive Economic and Trade Agreement \(CETA\) concluded](#), October 2014

<sup>28</sup> Unison, [TTIP, CETA and TiSA – what you need to know about EU trade agreements](#), March 2015, p3

far more than that. Through the pleasant-sounding “regulatory cooperation”, standards would be reduced across the board on the basis that they are “obstacles to trade”. That could include food safety, workers’ rights and environmental regulation.<sup>29</sup>

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<sup>29</sup> Nick Dearden, Think TTIP is a threat to democracy? There’s another trade deal that’s already signed, Guardian, 30 May 2016

## 4. Ratification of CETA in European and UK Parliament

### 4.1 CETA as a “mixed” agreement

The ratification process depends on whether the agreement is a “mixed” agreement. This type of agreement includes areas where Member States as well as the EU exercise competence. If this is the case, it must be ratified by all Member States as well as the European Union (i.e. the Council, acting by qualified majority and in some cases by unanimity – see Article 218 Treaty on the Functioning of the European Union), with the consent of the European Parliament in most cases. By contrast, an “EU only” agreement only requires ratification by the European Union (the Council).

The Commission said in July 2016 that CETA was being put forward as a mixed agreement. Press reports indicated, however, that the Commission had been hoping to classify the agreement as EU-only but backed down in the face of opposition from some Member States.<sup>30</sup> The trade commissioner, Cecilia Malmström, said that from a strict legal point of view, the Commission thought that CETA was an EU-only deal but acknowledged political problems with this and said that CETA was being put forward as a mixed agreement to allow for speedy signature:

From a strict legal standpoint, the Commission considers this agreement to fall under exclusive EU competence. However, the political situation in the Council is clear, and we understand the need for proposing it as a 'mixed' agreement, in order to allow for a speedy signature<sup>31</sup>

It is worth noting that the European Commission has asked the European Court of Justice for a ruling on whether the EU-Singapore free trade agreement is a mixed agreement or an EU only agreement. In its proposal for a Council decision on the signature of CETA, the Commission notes that CETA and the Singapore agreement have “essentially the same contents” and states the Commission’s view that the Singapore agreement is EU only. It notes that many Member States disagree with this view. The Commission says that once the Court issues its opinion, “it will be necessary to draw the appropriate conclusions.”<sup>32</sup>

The need for ratification of CETA by national parliaments is likely to slow down ratification of the agreement and it has been suggested that it could “even scupper the agreement.”<sup>33</sup>

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<sup>30</sup> “Juncker to give way on EU-Canada trade plan”, Financial Times, 4 July 2016

<sup>31</sup> European Commission Press Release, European Commission proposes signature and conclusion of EU-Canada trade deal, 5 July 2016

<sup>32</sup> European Commission, COM(2106) 444 final, 5 July 2016, p2

<sup>33</sup> Parliament plot, The Economist [Charlemagne column] 23 July 2016

## 4.2 Ratification in the EU

On 5 July 2016, the Commission proposed to the Council that CETA be signed and concluded (ie ratified).<sup>34</sup> The Commission also proposed provisional application of the agreement (see section 4.3 below). CETA was signed on 30 October 2016. After signature, the agreement goes to the European Parliament for approval. The European Parliament's consent will be needed before CETA can come into force (but see comments on provisional application below).<sup>35</sup> In November 2016, a request by MEPs to refer CETA to the European Court of Justice for an opinion on the investment protection provisions was defeated by 419 votes to 258 (with 22 abstentions). The European Parliament's plenary vote is expected in mid-February 2017.

## 4.3 Provisional application

As a mixed agreement, CETA will need to be approved by EU Member States in accordance with their own national procedures before it can fully come into effect. It has been suggested that this could mean approval by as many as 38 parliamentary chambers, including regional ones.<sup>36</sup>

However, trade agreements may be applied provisionally before the ratification process in the Member States is complete, provided the European Parliament gives its consent and with the agreement of the Council.<sup>37</sup> Assuming these conditions are met, the vast majority of CETA's provisions will be provisionally applied (98% according to an article in the Financial Times).<sup>38</sup> Provisional application is expected to take place in spring 2017.<sup>39</sup> The controversial Investment Court System will not be included in provisional application.<sup>40</sup> The UK Government supports provisional application.<sup>41</sup>

The Stop-TTIP campaign has said that most of the agreement could be provisionally implemented:

the most likely scenario is the one that will see CETA proceeding for ratification in the EU Parliament late this year and then, with the Council's blessing, more than 90% of CETA will enter into force. The remaining bits of it will require ratification by national

<sup>34</sup> European Commission Press Release, [European Commission proposes signature and conclusion of EU-Canada trade deal](#), 5 July 2016

<sup>35</sup> See [EU-Canada Comprehensive Economic and Trade Agreement](#), Briefing by European Parliamentary Research Service, January 2016, p2 and European Commission (DG Trade), [Trade negotiations step by step](#), September 2013, pp6-7

<sup>36</sup> "National ratification issue could derail EU-Canada trade deal", Financial Times, 3 July 2016

<sup>37</sup> European Commission, [CETA – a trade deal that sets a new standard for global trade – fact sheet](#), 29 October 2016

<sup>38</sup> EU and Canada sign deal amid fears about future of trade policy, Financial Times, 30 October 2016

<sup>39</sup> House of Commons European Scrutiny Committee, [Thirteenth Report of Session 2016-17](#), 18 October 2016, HC 71-xi para 1.2

<sup>40</sup> European Commission press release, [EU-Canada summit: newly signed trade agreement sets high standard for global trade](#), 30 October 2016

<sup>41</sup> European Scrutiny Committee, [Oral evidence on Parliamentary scrutiny of EU Trade Deal: EU Comprehensive Economic and Trade Agreement \(CETA\)](#), 26 October 2016, HC792, Q1

parliaments. In other words, this procedure bypasses national parliaments and de facto undermines the Commission's proposal on shared competences.<sup>42</sup>

An Early Day Motion opposing provisional application of CETA has been signed by 80 MPs.<sup>43</sup> Groups campaigning against CETA are also opposed to its provisional application on the grounds that it is undemocratic.<sup>44</sup>

## 4.4 Ratification by UK Parliament

Parliament cannot amend the CETA agreement: it can only accept it or object to it. The procedure by which Parliament ratifies treaties is set out in the *Constitutional Reform and Governance Act 2010* (sections 20 to 25).<sup>45</sup>

Mixed agreements requiring ratification must be laid before Parliament along with an Explanatory Memorandum. Both the agreement and the memorandum are laid before Parliament for 21 sitting days (defined as days when both the Commons and Lords are sitting). The agreement can be ratified if the 21 day period has passed without either House having resolved that the agreement should not be ratified.

If either House passes a resolution objecting to ratification, the Government must then give reasons why it still wants to ratify the agreement. If the Commons objects to ratification, it has another 21 days to consider the Government's reasons for ratification and can object again. The agreement may only be ratified if this further period of 21 days has passed without the Commons having resolved that the treaty not be ratified.

This process can continue indefinitely giving the House of Commons the power to block ratification. The House of Lords has only one opportunity to object so can only delay ratification briefly. This process was set out in the following PQ answer:

Caroline Lucas:

To ask the Secretary of State for Business, Innovation and Skills, what plans the Government has for parliamentary scrutiny of the EU-Canada trade agreement; and whether the Government will bring that agreement to the House for a vote.

Anna Soubry:

We expect that the EU-Canada Comprehensive and Economic Trade Agreement (CETA) will be a "mixed" agreement, covering areas of both EU and Member State competence. In that case, it will be subject to agreement by each EU Member State, the EU Council and the European Parliament. As part of this process the

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<sup>42</sup> Stop-TTIP, [The Commission of Illusionists](#), blog post, 29 July 2016. The UK Government's [Explanatory Memorandum](#) on the EU-Republic of Korea Trade Agreement said that the EU and Korea would provisionally apply all the commitments over which they hold competence "which is the vast majority".

<sup>43</sup> EDM 165

<sup>44</sup> See, for example, Stop-TTIP, [The Commission of Illusionists](#), blog post, 29 July 2016 and Global Justice Now, [EU ambassador to Canada says EU-Canada free trade deal may become UK law without UK parliamentary debate](#), 23 January 2016

<sup>45</sup> This section is based on, and there is more information in, [Commons Library Briefing Paper 7192, EU External Agreements: EU and UK procedures](#), 28 March 2016

agreement will be subject to Parliamentary scrutiny before it is ratified by the UK. The complete draft text of the agreement would be laid before Parliament for at least 21 sitting days during which time MPs and Lords may debate the treaty in either or both Houses and vote against the proposed ratification. For the parts of the agreement within UK competence, the proposals for a Council decision on signature and, subsequently, conclusion will be subject to scrutiny in both Houses of the UK Parliament. In practice EU trade agreements which contain a mixture of EU and Member State competence are agreed by consensus, this means the UK must agree before the treaty can fully come into force.<sup>46</sup>

## Consideration by European Scrutiny Committee

In addition to the process for ratification of the agreement, the Government has also committed to a debate on CETA on the Floor of the House.

In September 2016, the House of Commons European Scrutiny Committee recommended that there be an early debate on CETA on the Floor of the House for the following three reasons:

- It raises complex legal and policy issues for the UK, both while it is a Member of the EU and after its withdrawal from the EU, which the Government has as yet failed to adequately address (including on issues of competence, provisional application and the implications of Brexit);
- The trade deal continues to generate significant public interest (for example, various stakeholders across the EU have raised strong opposition to its investment provisions); there is a general need for more transparency in trade negotiations and their conclusion to ensure their democratic legitimacy; and
- Although there is parliamentary control over ratification of treaties, such a debate would provide the only opportunity for the House of Commons as a whole to scrutinise and have a say on the Government's position on CETA before it is signed and then implemented.<sup>47</sup>

In October, the Committee granted a conditional scrutiny waiver for signature of the agreement, recognising the time constraints involved in arranging a debate before CETA was signed. This was granted on condition that the debate on the Floor of the House be scheduled urgently to allow consideration of CETA before its provisional application in 2017.<sup>48</sup>

The Committee held an oral evidence session on CETA on 26 October 2016 at which the Chair, Sir William Cash, said that the Government's decision to agree to CETA's provisional application and to its conclusion

<sup>46</sup> PQ 37197 26 May 2016

<sup>47</sup> House of Commons European Scrutiny Committee, Tenth Report of Session 2016-17, HC 71-viii, 13 September 2016, p3

<sup>48</sup> House of Commons European Scrutiny Committee, Thirteenth Report of Session 2016-17, 18 October 2016, HC 71-xi p4



"constitutes an override of our scrutiny reserve resolution".<sup>49</sup> Appearing before the Committee, Dr Liam Fox, Secretary of State for International Trade, said:

I am sorry that the timescales meant that it was not possible to have a debate before decisions needed to be made on CETA in the Council. This was down to the parliamentary calendar and the timescale set for us. However, I therefore reinforce my commitment to the Committee today to hold such a debate. I am very happy to have that debate on the Floor of the House. Our officials are already working with business managers to identify a date, most likely, we understand, in November, but the Committee will understand that that is for the business managers.<sup>50</sup>

No debate had taken place by the time the House of Commons rose for Christmas recess. At its meeting on 7 December, the Committee reiterated the need for a debate and called for this to take place before mid-January 2017. There will be a debate on CETA in House of Commons European Committee B on Monday 6 February. The Leader of the House was asked about this on Thursday 2 February by Kate Green MP:

I understand that a debate on the comprehensive economic and trade agreement between the EU and Canada has been scheduled for Monday next week. The Leader of the House is aware of the intense interest in the House about this controversial treaty, so can he explain why the House has been given so little notice of the debate and why it is not taking place on the Floor of the House, as the European Scrutiny Committee, under the excellent chairmanship of the hon. Member for Stone (Sir William Cash), strongly recommended?

David Lidington MP replied:

I do not think that the notification given is unusual in terms of the period of notice given for European Committee debates. Having had to respond to many of those debates over the years, I can say to the hon. Lady that having to reply to up to 60 minutes of questions in a European Committee is a much tougher outing for a Minister than giving a 10-minute response to a 90-minute debate here in the Chamber. Two-and-a-half hours are allocated for the Committee and 90 minutes are allocated for a debate on the Floor of the House. Nevertheless, as I said earlier in response to the hon. Member for Ochil and South Perthshire (Ms Ahmed-Sheikh), who spoke from the SNP Benches, I will additionally undertake to explore whether in future there will be the possibility of a general debate about EU exit and international trade, in which case the hon. Member for Stretford and Urmston (Kate Green) would have a further opportunity to express her views on the Canada deal.<sup>51</sup>

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<sup>49</sup> European Scrutiny Committee, Oral evidence on Parliamentary scrutiny of EU Trade Deal: EU Comprehensive Economic and Trade Agreement (CETA), 26 October 2016, HC792, Q1

<sup>50</sup> European Scrutiny Committee, Oral evidence on Parliamentary scrutiny of EU Trade Deal: EU Comprehensive Economic and Trade Agreement (CETA), 26 October 2016, HC792, Q1

<sup>51</sup> HC Deb 2 February 2017 c1210-1211

The vote in the European Parliament is now expected to take place in mid-February 2016.

In addition, in January 2017, the House of Commons International Trade Committee announced an inquiry on CETA.

## 5. Impact of Brexit

The precise date of Brexit is not yet known and neither is the timing of CETA coming into force, or even whether it will be approved. If CETA is provisionally implemented while the UK is still in the EU, then the UK will be subject to all rights and obligations arising from the agreement while it remains a Member State.<sup>52</sup>

It is much less certain whether the UK will still be in the EU by the time CETA has been ratified by all Member States, as this may take a number of years. While the position is not entirely clear, it is doubtful whether CETA would continue to apply to the UK once it had left the EU. The European Scrutiny Committee report said:

The Government's analysis is that on leaving the EU, the UK will lose access to the trade preferences set out in CETA "unless arrangements to do are put in place as part of [its] negotiations with the EU". The Minister states that his Department is "examining options for the UK to enjoy continued access to its current trade preferences to provide continuity for UK businesses" and will update the Committee in due course as it develops its analysis.<sup>53</sup>

The implications of Brexit for CETA and whether it is desirable or possible for the agreement to continue after Brexit is one area where the Committee has asked the Government to provide more information.<sup>54</sup>

The Treasury Committee considered whether the UK would still be covered by EU trade agreements with other countries after Brexit. It said:

Were the UK to leave the EU, it is very uncertain whether it would be able to continue to participate in these agreements. The extent to which the UK would have to enter into negotiations to ensure its continued participation would probably depend on the attitude of the contracting parties, about which little is known.<sup>55</sup>

As noted in section 3.1 above, concerns have been raised that the UK could be tied into CETA's investment provisions for up to 20 years if Brexit has not happened by the time CETA is fully ratified.<sup>56</sup>

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<sup>52</sup> [PO 41487](#) 6 July 2016

<sup>53</sup> House of Commons European Scrutiny Committee, [Thirteenth Report of Session 2016-17](#), 18 October 2016, HC 71-xi para 1.11

<sup>54</sup> European Scrutiny Committee, [Meeting Summary, Wednesday 7 December 2016](#)

<sup>55</sup> Treasury Committee, [The economic and financial costs and benefits of the UK's EU membership](#), HC 122, 27 May 2016, para 226

<sup>56</sup> Global Justice Now, [EU accused of trying to push through 'toxic' trade deal ahead of Brexit](#), 4 July 2016

## 6. Links to further information

### European Commission

[Text of CETA](#)

Commission [CETA website](#)

[CETA – Summary of the final negotiating results](#), February 2016

### House of Commons Committees

House of Commons International Trade Committee [inquiry on CETA](#)

House of Commons European Scrutiny Committee, [Twenty-second Report of Session 2016-17](#), 13 December 2016, HC71-xx, pp4-5 & 8-15

House of Commons European Scrutiny Committee, [Eighteenth Report of 2016-17](#), 22 November 2016, HC 71-xvi, pp3-4 and 9-20

Rt Hon Dr Liam Fox MP, [Oral evidence on CETA](#), 26 October 2016

House of Commons European Scrutiny Committee, [Thirteenth Report of Session 2016-17](#), 18 October 2016, HC 71-xi, pp3-4 and 8-19

House of Commons European Scrutiny Committee, [Tenth Report of Session 2016-17](#), 13 September, HC 71-viii, p3 and pp9-19

### Canadian Government

[Canada – European Union Comprehensive Economic and Trade Agreement](#) (contains overview of agreement and chapter summaries)

### European Parliament Research Service briefings

[Is CETA a mixed agreement?](#), 1 July 2016

[Agriculture in the EU-Canada Comprehensive Economic and Trade Agreement \(CETA\)](#), July 2016

[EU-Canada Comprehensive Economic and Trade Agreement](#), Jan 2016

[Negotiations on the EU-Canada Comprehensive Economic and Trade Agreement \(CETA\) concluded](#), October 2014

[Comprehensive Economic and Trade Agreement \(CETA\) with Canada](#)

[A guide to EU procedures for the conclusion of international trade agreements](#), October 2016

### Criticisms of CETA

Global Justice Now, [CETA](#)

[Stop TTIP](#)

Corporate Europe Observatory (and others), [The zombie ISDS](#), by Pia Eberhardt, March 2016

Corporate Europe Observatory, [The great CETA swindle](#), November 2016

## BRIEFING PAPER

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