



BRIEFING PAPER

Number 7492, 2 March 2016

CETA: the EU-Canada free trade agreement

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Summary

What is CETA?

CETA is the Comprehensive Economic and Trade Agreement which is a trade deal between the EU and Canada. It has generally received less attention than TTIP – the Transatlantic Trade and Investment Partnership between the EU and US, although there are a number of similarities between the two. The CETA process is more advanced - the agreement was finalised in September 2014 while the TTIP negotiations are still ongoing. The decision over whether to ratify CETA will therefore be made before the decision on TTIP. Cecilia Malmström, the EU Trade Commissioner, has said that she expects CETA to be signed in 2016 and come into force in 2017.

What are its main provisions?

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. Controversial areas of the agreement include liberalisation of trade in services and measures to protect foreign investors.

How are the UK Parliament and European Parliament involved?

The agreement must be ratified by both the European Parliament and national parliaments of EU member states if it is a mixed agreement (ie one which falls under both EU and member state competence). No decision has been taken on this yet but the UK Government has said it thinks CETA is a mixed agreement. CETA may be applied provisionally. The Trade Commissioner has said this would generally be done only after ratification by the European Parliament.

What do supporters of CETA say?

The UK Government has claimed that UK exports to Canada will increase by 29% and Canadian exports to the UK will increase by 15% as a result of CETA and, in the long run, the benefit to the UK economy will be of the order of £1.3 billion a year. The European Commission has said that CETA is an agreement with a major economic player. The Trade Commissioner has described it as “a vital part of the platform of agreements we are building to make sure the EU is properly connected to the global economy.” In February 2016, the European Commission and the Canadian Government announced that they had agreed a new approach to address issues related to investment and ISDS (Investor State Dispute Settlement).

What do critics of the agreement say?

Concerns have arisen about both the content of the agreement and the process of ratifying it. In particular, there have been criticisms about the inclusion of controversial investment provisions in the agreement and the liberalisation of trade in services. Critics remain unconvinced about the reforms to the ISDS provisions. CETA is also seen by some as a way of bringing in elements of TTIP through the back door. Critics are also concerned about the process of ratifying trade deals – in particular that the agreement may be subject to “provisional application” – ie before parliaments in EU member states have had a chance to ratify it.

1. Background

The Comprehensive Economic and Trade Agreement (CETA) is a trade deal between the EU and Canada. CETA is described in a briefing note for the European Parliament as “the first comprehensive economic agreement with a highly industrialised Western economy, which shares a similar set of values and a similar tradition of the role of government in the economy.”¹

CETA has generally received much less interest than the Transatlantic Trade and Investment Partnership (TTIP) – a free trade agreement currently being negotiated between the EU and US.² However, critics of these trade agreements have pointed to parallels between TTIP and CETA, especially in the area of investment protection and argue that it is possible to stop or renegotiate CETA to address these issues. The investment protection issue is discussed in more detail below.

Negotiations for this treaty began in May 2009 and ended in August 2014. The legal review of the agreement has now been completed.³ The agreement will now be translated into member state languages and submitted for approval to the European Parliament and the Council.

It has not yet been decided whether CETA falls entirely within the competence of the EU or whether it includes member states’ competences; nor the extent to which it covers matters of shared competence (which can be exercised by either the EU or the member states). To the extent that it covers matters which remain exclusively within the competence of the member states, and to the extent that member states exercise shared competence, CETA would need to be ratified by member states. In its trade strategy, the Commission said that it wanted to submit CETA to the Council and then the European Parliament for approval as early as possible in 2016.⁴ The UK Government has said that it expected CETA to be laid before the UK Parliament in late 2016.⁵

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.⁶ The European Commission claim that it will lead to a yearly €12 billion increase in EU GDP.⁷ These estimates have been disputed.⁸

¹ [EU-Canada Comprehensive Economic and Trade Agreement](#), Briefing by European Parliamentary Research Service, January 2016, p2

² There is more information on TTIP in a [Library note](#).

³ The legally scrubbed version of the agreement is [here](#).

⁴ European Commission, [Trade for all: towards a more responsible trade and investment policy](#), 2015, p31

⁵ [PO 5063 6 July 2015](#)

⁶ [PO 20279](#) 7 January 2016

⁷ European Commission, [CETA](#)

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

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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.⁹

Box 1: Timeline

May 2009: start of CETA negotiations

August 2014: completion of CETA negotiations

February 2016: legal scrubbing of CETA completed.¹⁰

Next steps: The agreement will be translated in the languages of EU member states before being submitted to the Council and European Parliament for approval. In their joint statement in February 2016, Cecilia Malmström and Chrystia Freeland (Canadian Minister of International Trade) said that they expected CETA to be signed in 2016 and come into force in 2017.¹¹ The UK Government said in July 2015 that it expected CETA to be laid before the UK Parliament in late 2016.¹²

⁹ Cecilia Malmström [CETA Europe's Next Step](#), Speech at European Parliament, 9 December 2015

¹⁰ Canada-EU Comprehensive Economic and Trade Agreement (CETA), [Joint statement by Cecilia Malmström and Chrystia Freeland](#), 29 February 2016

¹¹ Canada-EU Comprehensive Economic and Trade Agreement (CETA), [Joint statement by Cecilia Malmström and Chrystia Freeland](#), 29 February 2016

¹² [PQ 5063 6 July 2015](#)

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.

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.”¹³

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.¹⁴

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 come from 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 indications (GIs) such as *Grana Padano*, *Roquefort*, *Elia Kalamatas Olives* or *Aceto balsamico di Modena* will be reserved in Canada

¹³ European Commission website, [CETA](#)

¹⁴ European Commission website, [CETA](#)

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to products imported from European regions where they traditionally come from.¹⁵

However, Global Justice Now have said that while France and Italy have secured this protection for certain of their agricultural products, the UK has not done so:

France and Italy have negotiated 42 exemptions each to protect many of their products, including brie and parmesan cheese, but the UK has chosen to protect none of its GIs. Under CETA, we could be eating Yorkshire Wensleydale cheese produced in Ontario and Cornish pasties from Nunavut.¹⁶

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

Box 2: UK-Canada trade and investment relations

UK exports to Canada were worth £6.4 billion in 2014 while imports amounted to £8.8 billion (see table below). Services accounted for nearly half of UK exports to Canada while UK imports were predominantly goods. The UK had an overall trade deficit with Canada of £2.5 billion. A surplus of £1.5 billion on trade in services was offset by a deficit of £4.0 billion on trade in goods.

UK trade with Canada

£ billion, 2014

	Exports	Imports	Balance
Goods	3.2	7.2	-4.0
Services	3.1	1.6	+1.5
Total	6.4	8.8	-2.5

Source: ONS, UK Economic Accounts

Note: figures may not sum due to rounding

The stock of inward investment in the UK by Canadian companies was £22.2 billion in 2014. Outward investment in Canada by UK companies was £28.8 billion.¹⁷

¹⁵ European Commission website, [CETA](#)

¹⁶ Global Justice Now, [CETA: TTIP's little brother](#), September 2015

¹⁷ ONS, [Foreign Direct Investment Involving UK Companies, 2014](#), 3 December 2015

3. Controversial aspects

3.1 Investor protection

CETA contains controversial provisions relating to investment. Critics of these argue they would allow companies to sue governments in special tribunals if they have been adversely affected by changes in public policy. Similar provisions in TTIP are highly controversial. For the TTIP negotiations, the European Commission is looking at ways to reform ISDS to address some of the criticisms.

Some had argued that the ISDS elements in CETA, as it was originally drafted, were problematic as they did not include the reformed ISDS being proposed for TTIP by the European Commission. For example, writing on the TUC's Touchstone blog in July 2015, Owen Tudor said:

But CETA contains ISDS-heavy, the unreformed version. And according to the European Parliament vote last week, pretty much everyone is now against that version, and agrees it must be scrapped. The Green, Left and eurosceptic groups (along with groups like the UK Labour Party) opposed ISDS outright. The Liberals in ALDE, the Christian Democrats in the EPP, and even the Conservatives in the ECR, opposed ISDS-heavy, although there must be some suspicion that this was so that ISDS-lite stood a chance of getting adopted.

[...]

The President of the European Parliament, Martin Schulz, who crafted the compromise ahead of last week's vote, and the leader of the Party of Socialists & Democrats Gianni Pitella MEP, whose split group helped deliver the majority for that compromise, say CETA must be reopened, or renegotiated. The Canadians are worried, although the current Canadian government maintains it can secure sufficient votes in the European Parliament to get the deal through (expect some mammoth arm-twisting, which we must resist.) The Liberal and NDP parties likely to overturn the current Conservative majority in the Canadian Parliament are keeping their cards close to their chests.

So the fightback on CETA, while it still contains ISDS-heavy, begins.¹⁸

The pressure group, Global Justice Now, which is a critic of TTIP and CETA, has published a guide to CETA. On ISDS, this said:

If the EU Commission does not want ISDS in TTIP anymore, then CETA should not be ratified as long as ISDS is part of the deal.

There are many US companies which are likely to use subsidiaries in Canada in order to take advantage of the ISDS provisions in CETA ...

[...]

If we fail to stop CETA, then it is likely that we will also get much of what campaigners are seeking to avoid from ISDS in TTIP by the backdoor.¹⁹

¹⁸ Owen Tudor, [ISDS-lite could yet scupper the EU-Canada trade deal](#), TUC Touchstone blog, 16 July 2015

¹⁹ Global Justice Now, [CETA: TTIP's little brother](#), September 2015

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In response to concerns about ISDS, Cecilia Malmström said that the Commission wished to make improvements to CETA in the area of investment protection during the process of legal scrubbing. In February 2016, the European Commission and the Canadian Government announced that they had agreed a new approach to investment protection and dispute settlement in CETA. This was based on the EU's proposals in this area, made in the TTIP negotiations in November 2015. 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.²⁰

Critics of CETA remain unconvinced by these changes. For example, Natacha Cingotti, trade campaigner for Friends of the Earth Europe, said:

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.²¹

Pia Eberhardt of Corporate Europe Observatory said:

Some MEPs want to update the EU-Canada CETA deal with this 'new' ISDS approach. But the Commission's 'new' ISDS model is as dangerous for democracy, public interest legislation, and taxpayer money as the 'old' model enshrined in the EU-Canada CETA deal. The rebranded version contains the same dangerous investor privileges, often in wording identical to the CETA text. We must not be fooled by falling into this PR trap – special rights

²⁰ 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.

²¹ Friends of the Earth Europe, [Dangerous CETA deal must be rejected](#), 29 February 2016

for multinationals and the rich are unacceptable, in whatever disguise.²²

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. In CETA, the EU has excluded public services such as health, education and other social services, along with audio-visual services and some air services.²³ 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.²⁴

A paper by the campaign group, Global Justice Now also contains criticism of CETA in other areas including food standards, workers’ rights and the environment.²⁵

²² Corporate Europe Observatory, [Zombie attack! TTIP corporate super rights come back from the dead](#), 17 February 2016

²³ European Parliament, [Negotiations on the EU-Canada Comprehensive Economic and Trade Agreement \(CETA\) concluded](#), October 2014

²⁴ Unison, [TTIP, CETA and TISA – what you need to know about EU trade agreements](#), March 2015, p3

²⁵ Global Justice Now, [CETA: TTIP’s little brother](#), September 2015

4. Ratification of CETA in European and UK Parliament

4.1 Is CETA a “mixed” agreement?

The ratification process depends on whether the agreement is a “mixed” agreement. This type of agreement includes areas where member states exercise competence. If this is the case, it must be ratified by all member states as well as the European Parliament. No decision has been taken on this issue but the Government said in 2014 that it considered CETA to be a mixed agreement.²⁶

4.2 Ratification in European Parliament

Once the process of legal review and translation into all member state languages is complete, the Commission makes formal proposals to sign and conclude (ratify) the agreement.²⁷ Conclusion of the agreement requires, in this case, the consent of the European Parliament. There is a vote in the International Trade Committee followed by a vote in the plenary.²⁸

4.3 Provisional application

The text of the Treaty provides for it to be provisionally applied (in whole or in part) once the parties have notified each other that the relevant procedures have been completed. If it is a mixed agreement the member states will be parties in addition to the EU. For the EU the Council is able to agree to provisional application before approval by the European Parliament.²⁹ In practice, this does not tend to happen in the case of important trade agreements until consent has been granted by the European Parliament. Cecilia Malmström has agreed that the practice of waiting for consent from the European Parliament should continue, while noting that there may be exceptions. She told the European Parliament:

During the last five years a practice has developed not to provisionally apply politically important trade agreements before the European Parliament has had the opportunity to give its consent. This was the case for the Free Trade Agreement with Korea, the multiparty trade agreement with Colombia and Peru and EU-Central America Association Agreement.

Even if the power to decide on provisional application lies with the Council rather than with the Commission, I agree that this practice should continue. I am ready, when proposing decisions to sign politically important trade agreements which fall under my responsibility, to ask Council to delay provisional application until the European Parliament has given its consent. However, we need certain flexibility in applying such a practice as there will always be

²⁶ [PQ 212861](#) 17 November 2014

²⁷ These can be combined in one legal instrument.

²⁸ 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

²⁹ Article 218 (5) of the [Treaty on the Functioning of the European Union](#)

occasions where the urgency of a particular file, or its technical character, mean that it is unwarranted to delay its application pending the EP's consent. This was the case for the provisional application of the Association Agreements with Georgia and Moldova, on the one hand, and of very technical measures such as the adaptation of our international agreements as a result of Croatia's accession to the EU.

In any event, in such cases I undertake to inform the Chair of the INTA Committee and to seek his views on such course of action.³⁰

In answer to a PQ in the European Parliament, the Trade Commissioner said:

All of the existing EU FTAs provide for provisional application and for the Parties to fix the scope of provisional application. It is not uncommon for international trade and investment agreements to be applied provisionally for some time pending their ratification. Within the EU context, if they are 'mixed agreements', they are signed and ratified by the EU and by all EU Member States in accordance with their respective internal procedures. The ratification process may take several years due to the time required by EU Member States to complete their own processes.³¹

The European Commission was asked which aspects of CETA (and specifically the ISDS provisions) would be subject to provisional application in a PQ last year. Dietmar Köster (S&D) asked:

Many ordinary Europeans are concerned about the implications of the CETA and TTIP free trade agreements.

It recently emerged that as a result of a 'provisional application' decision by the European Council sections of the CETA will become binding under international law even though they have not been approved by the parliaments of the EU Member States.

1. Which sections of the agreement are involved?
2. Do these include the provisions on ISDS?

In response, the Commission said:

Article 218(5) of the TFEU attributes to the Council the possibility to decide on the provisional application of international agreements to be concluded by the Union.

For the time being, none of the provisions of the Comprehensive Economic and Trade Agreement (CETA) with Canada are being provisionally applied as the text of the agreement is being legally revised.

The Council will take a decision on the signature of CETA on the basis of a proposal from the Commission and, if warranted, will also decide on its provisional application.

It is important to note in this context that Commissioner Malmström has declared in writing to the INTA Committee that, '(e)ven if the power to decide on provisional application lies with the Council, (...) I am ready, when proposing decisions to sign politically important trade agreements which fall under my responsibility, to ask the Council to delay provisional application until the European Parliament has given its consent'. It is also to

³⁰ [Answers to the European Parliament Questionnaire to the Commissioner-designate, Cecilia Malmström](#), p6

³¹ European Parliament [PQ E-002266/2015](#) 18 June 2015

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be noted that, in recent years, several important trade agreements were provisionally applied only after the European Parliament had given its consent.³²

If the UK is a separate party to the Treaty (as a mixed agreement) there is no formal requirement for parliamentary approval before provisional application. However, to the extent that the Treaty needs to be designated as an EU Treaty under section 1 of the European Communities Act 1972 in order to be properly implemented in the UK then this procedure would need to be followed before its provisional application.³³

Global Justice Now, an organisation which campaigns against CETA, and other trade agreements, has criticised the lack of accountability to national parliaments of trade agreements which are applied provisionally. Nick Dearden, director of Global Justice Now, said:

The EU ambassador to Canada has made clear that CETA, and therefore TTIP, will mostly become law before the British Parliament has even seen the texts. Some details are still unclear, but essentially this could mean the British government facing a massive lawsuit from a Canadian or American corporation on the basis of a deal our parliament hasn't ratified. That's how little these trade deals have to do with democratic accountability.³⁴

4.4 Ratification by the UK Parliament

The UK Parliament's process for ratifying trade agreements is explained in the [Library's note on TTIP](#).

³² European Parliament [PO P-002491/2015](#), 27 April 2014

³³ Section 1(3) requires designation to be by Order In council, the draft of which has been approved by resolution of each House of Parliament.

³⁴ Global Justice Now, [EU ambassador to Canada says EU-Canada free trade deal may become UK law without UK parliamentary debate](#), 23 January 2016

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