



Brexit

EU-Canada Comprehensive Economic and Trade Agreement (CETA)



The Comprehensive Economic and Trade Agreement (CETA) is a free trade agreement between the EU and Canada, and to date is the most far-reaching of the EU trade agreements - concluded, but not yet ratified. In this article we explore the relevance of the EU-Canada deal to the forthcoming UK-EU trade negotiations, once the UK invokes Article 50 TFEU.

Background

The EU-Canada trade negotiations commenced in March 2009, when a Canada-EU joint report was finalised, defining the scope of potential negotiations. In September 2011 talks started on investment protection within the CETA framework. Seven years after the start of the process, in July 2016, the final text as agreed by both parties was formally adopted by the European Commission (Commission). It is the most comprehensive trade agreement negotiated by the EU to date, extending further than the EU-South Korea trade deal, ratified in 2011.

It is intended that CETA will remove more than 99% of tariffs (customs duties), currently imposed on trade between the EU and Canada. Most tariffs will be removed when the agreement comes into force; and all tariffs covered by CETA will be removed within seven years.

Beyond tariff cuts, CETA includes substantial liberalisation of trade in agricultural products between the EU and Canada. CETA also includes provisions on market access for goods, services, investment and government procurement, as well as on intellectual property rights, sanitary and phytosanitary measures, sustainable development, regulatory cooperation, mutual recognition, trade facilitation, cooperation on raw materials, and technical barriers to trade.

In addition, CETA also includes provisions on investment protection and investment dispute settlement, comprising an investment court system. These reflect a new approach developed by the EU for investment dispute resolution, which was also proposed by the EU in the currently ongoing Transatlantic Trade and Investment Partnership (TTIP) negotiations with the US.

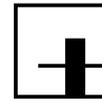
Ratification Process

The Commission proposed that CETA be signed and concluded as a 'mixed agreement'; as opposed to an agreement that is within EU exclusive competence. This means that on the EU side, it must be signed by both the EU (Council and EU Parliament), and by each of the 28 Member States in accordance with the national legal requirements, in certain states requiring a vote by regional parliaments. By contrast, an agreement falling within EU exclusive competence requires ratification only at the EU level.

Highlighting legal and political complexities, CETA ratification process at the Member State level was halted by Belgium's Walloon Parliament, which initially blocked the trade deal, before reaching an agreement on 27 October 2016. The EU-Canada Agreement also faced legal challenges in Germany, but the German Constitutional Court rejected an application to issue an interim order prohibiting the German Government from signing the CETA (BVerfGE of 13 October 2016).

In the UK, the House of Commons on 12 October 2016 published a Briefing Paper, entitled CETA: the EU-Canada free trade agreement. It makes it clear that if CETA is ratified whilst the UK is still an EU Member State, the UK will have to comply with CETA. The report also states that if Brexit occurred after full ratification of CETA, it is possible that the UK could be bound by its investment provisions for 20 years.

It is also relevant in this context that currently the Commission is seeking an opinion from the Court of Justice of the EU on the competence to sign and ratify an EU trade agreement with Singapore (Case A-2/15). The questions submitted to the Court ask whether the EU-Singapore Agreement is a "mixed agreement" within



the meaning of the Lisbon Treaty, which would require ratification of the national and regional parliaments of the current 28 Member States. The Opinion is expected in the first half of 2017 and is eagerly awaited, as it will provide guidance on the elements of the trade agreements that fall within the EU's exclusive and shared competence. 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 within the EU's exclusive competence.

Does the CETA experience provide signposting for the UK?

CETA negotiations and ratification process are important in the context of the forthcoming UK-EU trade negotiations.

It is not yet certain whether a UK-EU trade deal will be negotiated as part of the leaving the EU process once Article 50 TFEU is invoked, or whether it will have to be done after the UK leaves the EU as a separate process. Nonetheless, hurdles in the CETA ratification process set an alarming precedent for EU trade policy future. The fact that the EU-Canada trade deal could potentially be blocked by one EU regional or national parliament highlights legal and political complexities of completing comprehensive trade agreements with the EU. It is possible that the EU trade partners may shy away from negotiating trade deals that span the EU and Member States' competences (i.e. "mixed agreements").

The EU Court Opinion on the EU-Singapore Agreement is also eagerly awaited, as it will provide legal clarity for the EU ratification process of future trade deals.

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