
CETA briefing
August 2015

Comprehensive Economic and Trade Agreement (CETA)

Introduction

On 8 August 2014 it was announced that Canada and the EU had 'finalised' the text on the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the text published online, first as a leaked document and then on the European Commission website.¹

On the basis of concerns raised by this text, on 4 September 2014 the TUC's General Council adopted a position of outright opposition to CETA. This is in line with the Canadian Labour Congress (CLC)² and the European Trade Union Confederation (ETUC)³ who are also opposed to the deal.

CETA will come to the European Parliament for ratification sooner than the Transatlantic Trade and Investment Partnership (TTIP) potentially early 2016 although it needs first to be translated into all the EU languages and reviewed by legal teams. Secondly, the European Commission is still awaiting the outcome of its request to the European Court of Justice to establish which provisions of the EU Free Trade Agreement with Singapore fall within the EU's competence and which remain in the Member States' remit.⁴ This is likely to clarify whether the provisions in CETA are an exclusive EU competence – and thus only need to be voted through by the European Parliament – or are 'mixed' and so would need to be approved both by MEPs and member states' parliaments (however, the assumption everyone is working on is that national parliament votes *will* be needed.)

CETA will also have to be ratified by the ten Canadian provincial legislatures. There is pressure for Canada to ratify the agreement before its general election in

¹ http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf

² http://convention2014.canadianlabour.ca/resolution_s

³ http://www.etuc.org/press/european-trade-union-calls-fundamental-rethink-canadian-and-us-trade-deals#.VT_qjNKqgko

⁴ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1269>

October – which the current government is expected to lose - but this seems unlikely.

The TUC is calling on MPs to oppose the ratification of CETA if it does come to national parliaments and will be calling on MEPs to vote against the agreement as well.

TUC key concerns with CETA

Public services

CETA takes a 'negative list' approach to the listing of services in the Investment chapter which means that only specific listed services will be safeguarded from further liberalisation. There is a very narrow range of services listed which would not cover much of our part-privatised services such as health, education, transport etc. This opens the door for Canadian investors to make inroads into European public services.

Investor State Dispute Settlement (ISDS)

Canadian investors will be able to challenge public policy through an unaccountable closed court system that Investor State Dispute Settlement (ISDS) provisions in the deal will establish. ISDS has been used numerous times by investors to challenge public policy decisions by suing for compensation, imposing legal costs as well as any settlement.⁵ Slovakia, for example, was sued through ISDS under its bilateral trade deal with the Netherlands when it renationalised its health service. It had to pay \$22 billion dollars in compensation to the Dutch insurance company Achmea. The TUC outlined in detail its opposition to the inclusion of ISDS in trade deals in its submission to the European Commission's consultation on the Investment chapter of TTIP⁶.

US investors will also be able to use ISDS in CETA to sue the UK government for bringing public services back in-house. This is a real threat as 80% of US companies operating in the EU also have bases in Canada.

State sovereignty

CETA will include a 'ratchet clause' which prevents governments reversing certain liberalisation commitments made in the deal. CETA gives investors – either directly through ISDS or indirectly through a state-to-state dispute they could pressure governments to trigger - wide-ranging powers to challenge government actions. This is due to CETA's broad definitions of what counts as a breach of 'fair and equitable treatment' and 'indirect expropriation'. International trade lawyers will be

⁵ <http://corporateeurope.org/trade/2013/06/transatlantic-corporate-bill-rights>

⁶ See: <http://www.tuc.org.uk/international-issues/tuc-submission-european-commissions-consultation-isds>

able to use such wording as grounds for cases against the government for any policies that threaten company's future profits – allowing them to challenge decisions to bring public services back in-house and other public policies affecting public services.

Labour standards

While CETA commits the EU and Canada to uphold core ILO standards, there are no sanctions if labour rights are violated. Instead, trade unions will only be able to raise concern through advisory groups similar to those established in the EU-Korea and EU-Colombia/Peru free trade agreements, which might lead to reports from experts – in contrast with the multi-million dollar compensation available to foreign investors. The labour rights sections of other trade agreements have so far proved ineffective. In Korea, the government was merely issued with a letter of concern by the EU in January 2014 when police raided the headquarters of one of the national trade union centres.

Parliamentary opposition

The Socialists and Democrats in the European Parliament, while stating that ultimately they reserve their judgement on CETA until the final text comes before the European Parliament, have recently adopted a position paper which raises concerns with ISDS in CETA and other trade agreements. The paper states that any investor protection measures in these agreements must guarantee public services and public policy making.⁷

Opposition to ISDS in CETA has been raised by France and Germany, and the Syriza government in Greece has said it would vote against CETA should it come to national parliaments.

Members of the European Parliament in July adopted a report on TTIP which called on the Commission to decisively reject the traditional version of ISDS currently contained in CETA. It stated the Commission should

'...replace the ISDS-system with a new system for resolving disputes between investors and states which is subject to democratic principles and scrutiny where potential cases are treated in a transparent manner by publicly appointed, independent professional judges in public hearings and which includes an appellate mechanism, where consistency of judicial decisions is ensured, the jurisdiction of courts of the EU and of the Member States is respected and where private interests cannot undermine public policy objectives.'

⁷http://www.socialistsanddemocrats.eu/sites/default/files/position_paper_investor_state_dispute_settlement_ISDS_en_150304_0.pdf

Gianni Pittella, President of the Socialists & Democrats group in the European Parliament commented in July that this means:

'ISDS is dead. It must be replaced by a new public and transparent system of investment protection, in which private interests cannot undermine public policy and which is subject to public law. For us, a new system means publicly appointed judges. No to private arbitrators. Yes to full transparency during the court cases. Yes to an appellate mechanism. These are the conditions for a new system. If these conditions are not met, it's not good enough for us.'

He went on to state that the Socialist and Democrats would 'fight for a review' of the ISDS provisions in CETA so that they can be amended.

The TUC does not support the report's proposal that a modified version of ISDS would be preferable to the traditional ISDS found in CETA, however. We are opposed in principle to foreign investors having a special court system to sue for compensation if they claim their rights have been violated – no equivalent exists for consumers, workers or domestic investors. The TUC believes there should be no ISDS or modified variation of ISDS in CETA, TTIP or any trade agreement.

The TUC supported the amendment tabled by Labour MEP Judith Kirton-Darling for report which called for ISDS to be removed from TTIP entirely; unfortunately this amendment was not voted through.

The report also called for enforcement of labour standards and a broad carve-out for public services in TTIP. Unions are calling on the Commission to apply these standards also to CETA, as well.