

CETA: TTIP's little brother

A guide to the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada

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August 2016

If you thought Brexit meant that we would be free of the terrible impacts of TTIP, the controversial US-EU trade deal, it is time to think again. The Canadian equivalent to TTIP, called CETA, is on the verge of being ratified but is not receiving the scrutiny or attention it deserves. CETA could well be approved before we leave the EU, meaning we would be subject to some of its provisions for up to 20 years.

CETA looks set to include the most controversial part of TTIP, the Investment Court System (ICS), which gives corporations new powers to sue governments

through a special corporate court. Because many US firms have Canadian subsidiaries, CETA will also enable US corporations to operate in the EU and UK markets. Public services are particularly vulnerable because CETA locks in current levels of liberalisation making it difficult for future governments to stop Canadian companies from delivering public services in countries like the UK.

We have only a few months to stop CETA. But if activists across Europe mobilise, there is a chance we can stop the deal.



Artwork: Jacob V Joyce

About CETA

CETA has been negotiated between the EU and Canada since 2009. Like TTIP, it has been negotiated largely in secret. It is unlikely that MEPs will have read the whole 1500 page text and there has been no scrutiny by the UK Parliament at all. The text was signed in September 2014 and has been waiting for the EU Parliament to ratify the deal ever since. Controversy over the so-called ISDS (Investor State Dispute Settlement) corporate

court system led the two sides to modify the deal in early 2016 in an attempt to head off criticism.

The EU Commission argues that CETA will increase EU-Canada trade and services by 23% and increase EU Gross Domestic Product by about €12 billion a year. This is because it will remove 99% of tariffs from EU-Canadian trade and increase unconditional access to the EU and Canadian markets by businesses from each side. However, the benefits are less than certain, with other

economists estimating that even seven years after the agreement comes into force, economic growth will only increase by 0.09% annually.

As CETA is so close to being implemented, it is highly likely that we will be subject to it, despite the fact that we are leaving the EU. If CETA comes into full force before the UK leaves the EU, we could be subject to many of the provisions for up to 20 years. Even if we have left before this time, the British government has indicated that it would want to sign up to CETA from outside the EU. This means it is vitally important that people across the UK make their views known and reject this corporate stitch up that essentially brings in much of TTIP - CETA's better known US cousin - by the back door.

Secret Corporate Courts

When the original text of CETA was finalised in 2014, the deal included Investor State Dispute Settlement (ISDS), a system of secretive tribunals used to sue states if they pursue any regulation or policy that could limit the profits a company is expecting to make.

For example, ISDS has been used by Veolia to sue Egypt for increasing the minimum wage and by numerous energy companies to sue Argentina for freezing energy prices. The awards given to multinational corporations have been gigantic. US oil company Occidental Petroleum, for example, won compensation of over £1.5 billion in a claim against Ecuador. ISDS tribunals are also infamously

secretive. ISDS cases are decided not by judges, but by a panel of corporate lawyers, who have a vested interest in encouraging more cases due to the way in which they are paid. There is no right of appeal.

The prospect of ISDS being part of TTIP and CETA understandably provoked a wave of public anger. A consultation held by the European Commission on the inclusion of ISDS in TTIP resulted in 97% of the 150,000 responses being against the corporate court system.

In response to this anger, and opposition from many MEPs, the European Commission decided to push for a rebrand of ISDS. Branded 'ISDS-lite' by campaigners, the Investor Court System (ICS) is being sold as a more transparent improvement over ISDS.

And it is true that the proposed ICS system does represent a minor improvement over ISDS in terms of transparency. Judges, not corporate lawyers, will consider cases and it will be a public system with right of appeal. But, the core of ISDS remains unchanged. It is still about endowing corporates with rights that governments and people do not enjoy. ICS will still lead to 'regulatory chill' whereby governments become afraid to take any measure that multinational companies disapprove of for fear of being sued. In some ways, ICS actually makes matters worse than before in that it represents a massive expansion of ISDS and lends

TTIP by the back door

TTIP, or the Transatlantic Trade and Investment Partnership to give it its full name, is the proposed trade deal between the US and EU. It is far better known than CETA and has inspired a pan-European campaign to stop it. Over 3 million people signed a petition against TTIP last year, over 500,000 of which were from the UK. Thanks to activist efforts, from being a foregone conclusion, TTIP was on the verge of collapse by spring 2016 with France threatening to veto the whole deal.

Now the UK is leaving the EU, we will probably no longer be subject to TTIP regardless of whether it is approved by the rest of the EU. But much of what we feared in TTIP could end up coming in anyway thanks to CETA. Indeed, many of the same US-based multinationals may stand to benefit.

Indeed, there are many US companies which could use subsidiaries in Canada in order to take advantage of the ICS provisions in CETA, including Wal-Mart, Chevron, Coca Cola and Monsanto. Canada is also home to highly litigious companies of its own. OceanaGold is a Canadian mining firm that is currently suing El Salvador for \$301 million because it declared a moratorium on mining in the country. Another Canadian mining company, Lone Pine Resources, even sued its own government through ISDS by using a US subsidiary to pose as a "foreign" company and attempt to extract \$250 million in compensation for Quebec's moratorium on fracking.

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

it a new institutional permanence. And some of the improvements are not all they have been made out to be. For example, the judges who will preside over ICS hearings will be paid according to similar rules to those in ISDS (in other words by-the-hour). This introduces the same perverse incentive for them to rule in favour of corporations to encourage more cases. Indeed, Germany's largest association of judges has said that "Neither the proposed procedure for the appointment of judges of the ICS nor their position meet the international requirements for the independence of courts".

In essence, ICS is little more than a cosmetic rebrand of ISDS. And one which comes with all the potential threats to public services like the NHS that ISDS did. If we end up being bound by the provisions of CETA, reversing the privatisation of public services could become more difficult.

Leaving the EU is not likely to get us off the hook either. If CETA comes into force before we leave, we will continue to be subject to arbitration claims through ICS for another 20 years.

It is also highly likely that CETA will be 'provisionally implemented' before national parliaments get a say on it, meaning that the chances are that CETA will come into force in early 2017.

Until recently it wasn't even clear that national parliaments would get a say at all on CETA. But in the face of campaigners demands, the European Commission has now proposed that CETA be regarded as a 'mixed agreement' meaning that it has to be ratified by the legislatures of all member states.

Locking in privatisation

CETA poses a major threat to the UK's ability to renationalise or regulate public services. The negative list approach adopted in CETA means all public services are covered in the provisions of the agreement unless explicitly ruled out by governments (known as the list it or lose it approach). This is a first for an EU trade agreement. The EU has negotiated exclusions for public services, including health, education and social services, although the definition of what a public service is remains unclear. However, there is no exclusion for public services from ICS.

CETA also includes a ratchet clause to lock in current levels of privatisation and liberalisation and increase the role of the private sector in the future. If Canadian or EU governments want to reverse

privatisation and liberalisation in the future they could break the terms of the agreement

Danger for the climate

CETA will provide a major opportunity for foreign energy and mining companies from Canada to step up fracking and other environmentally damaging activities in the UK and the EU.

In particular, the prospect of importing carbon-intensive tar sands oil from Canada is a major threat to the climate. Since 2009, the EU has been planning to introduce a new Fuel Quality Directive (FQD) which would make it difficult to import tar sands oil. If CETA is ratified, the EU is unlikely to adopt a more robust FQD and imports of dirty tar sands oil will be guaranteed for the foreseeable future. Now the UK is leaving the EU altogether, the likelihood of tar sands oil finding its way to Britain is even higher, as we will not be subject to the FQD at all unless we remain a member of the European Economic Area (like Norway).

Weaker food standards

The UK has chosen not to protect UK food standards and labelling in CETA.

Across the EU, governments ensure that certain products can only be produced in explicit geographical areas through a system called Geographical Indications (GIs). This is why only sparkling wine made in the Champagne region of France can be called Champagne and Cornish pasties can only be called this if they are made in Cornwall.

The ability of small producers to protect locally produced food and the benefits it brings to local economies is important across the EU, and around the world.

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, Canadians could be eating Yorkshire Wensleydale cheese produced in Ontario and Cornish pasties from Nunavut.

Furthermore, British exports are likely to be hit hard by increased competition from Canadian firms which produce their own Cornish pasties and Cumberland sausages instead of importing them from the UK.

A separate agreement between the EU and Canada already exists to protect Scotch whisky and other alcoholic beverages.

Threatening the ability to regulate in the public interest

CETA is explicit in its ambition to reduce regulation on business. Governments will be expected to provide corporations with licencing procedures that are as 'simple as possible' and that do not 'unduly complicate or delay their activities'. These provisions could make legitimate public enquiries or assessments open to challenge.

While the CETA text refers to the harmless sounding 'regulatory cooperation', in practice this can lead to reducing standards in either the EU or Canada, whichever has the strictest regulations, in order to find a compromise between the different standards. This could lead to a race to the bottom in areas such as food safety, workers' rights and environmental regulation.

The ability of governments to protect their economies by regulating financial services is also at risk from CETA. Important measures could be restricted, such as limiting the growth or transactions of financial firms that have become 'too big to fail'. The onus will also be placed on governments to prove that this regulation is 'no more than is necessary'.

Information sharing is also a big element of regulatory cooperation. However, the proposals are likely to institutionalise the influence of multinational corporations because corporations will get greater and earlier access to any proposed regulation. It is unlikely they will be pushing for higher standards.

Unlike in TTIP, however, regulatory cooperation within CETA is mostly voluntary. While this is preferable, the power of voluntary measures to increase corporate influence should not be underestimated.

Global context

CETA and TTIP are just two of many new trade deals which are currently being negotiated around the world.

12 countries in North America, Latin America, Australasia and Asia have been negotiating the Trans Pacific Partnership (TPP) for many years. It is a particularly aggressive free trade agreement, targeting intellectual property, public services and government procurement. But it goes further by committing countries to liberalising all services, unless they are specifically excluded. It is not easy to carefully define services, with the purpose of excluding them. It is impossible to protect future services which have not yet been developed.

In 2012, 47 countries (27 of them in the EU) began negotiating to liberalise and deregulate services as part of the Trade in Services Agreement (TISA). Specifically the deal seeks to give foreign corporations access to domestic markets and thereby threaten national, regional and local governments' ability to regulate in the public interest.

These trade deals share many characteristics, in particular lowering standards and creating new opportunities for business to provide public services.

They are also negotiated away from public and political scrutiny. None of these deals have yet been scrutinised by the UK parliament and MPs will have no opportunity to change or amend the content of the deals.

Take action

There is a large and growing movement of people around the world taking action to stop trade deals which are not in people's interests and harm the planet, and campaign instead for trade which helps make the world a more just, equal and sustainable place.

Find out more about CETA and other trade deals at www.globaljustice.org.uk



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