

CETA from an EU perspective

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- CETA, the 'nice' agreement — or is it?
- What do the unions say?
- The EU debate about arbitration
- The EU timeline

Overview

- If anyone has heard about the free trade agreements, it is about TTIP, not CETA
- Canada is a much more liberal country
- Trudeau is a nice guy
- CETA covers fewer areas than TTIP

CETA, the 'nice' agreement — or is it? /1

<p>TTIP</p> <ul style="list-style-type: none">environmentconsumerspublic healthworking conditionssocial protectionsocial securityhuman, animal & plant lifeanimal welfarehealth & safetypersonal datacyber securitycultural diversityfinancial stability	<p>CETA</p> <ul style="list-style-type: none">SPS (Sanitary and Phyto sanitary), i.e. animal & plant lifeTBT (technical barriers to trade)cross-border trade in servicesenvironmentsustainable developmentlabour
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CETA, the 'nice' agreement — or is it? /2

However, the similarities are greater than the differences

- Agricultural practices (asthma drug ractopamine, neonicotinoid pesticide, glyphosate / GMO, hormones)
- American companies have a large say in Canada
 - 80% of American multinationals have a significant interest in a Canadian company
 - ISDS cases can be started via Canada
- Regulatory cooperation
- CETA has an ISDS variant (ICS)

CETA, the 'nice' agreement — or is it? /3

In 2014 ETUC has made clear it opposed CETA because:

- It includes an Investor-State Dispute Settlement (ISDS) mechanism which gives inappropriate legal advantages to foreign investors;
- It does not unequivocally exclude public services in European countries from areas that can be liberalised;
- It does not include enforcement procedures to guarantee the implementation of standards of the International Labour Organisation (ILO).

What do unions say? /1

A study by the Austrian Arbeiterkammer found

- CETA does cover public services
- Negative listing means that everything is bound unless explicitly excluded ('list it or lose it')
- Lock-in of current and future levels of liberalisation
- Fragmentary nature and uncertain scope of exceptions for public services
- Sneaking treaty amendments bypassing parliamentary processes
- Undermining democratic law- and policy-making

What do unions say? /2

Five changes are needed, according to ETUC and CLC in a joint statement from May 2016:

1. Drop the “VIP process for foreign investors”;
2. Violations of CETA’s labour provisions should be subject to its dispute settlement process and punishable ultimately with sanctions;
3. Ensure that new services are not subject to “liberalisation by default”;
4. Categorically exclude public services from liberalisation.
5. Delete “unconditional” access of foreign firms to public procurement contracts.

What do unions say? /3

- ISDS is very controversial
- A public consultation published in April 2015 got an unprecedented number of 150.000 responses
- 97% were negative
- The social democrats revolted
- Cecilia Malmström had to come up with a plan B

The EU debate about arbitration /1

Investment Court System (ICS) is a botoxed ISDS.
Improvements:

- A bit more transparency
- A bit fewer incentives for lawyers to stall lawsuits
- A court of appeal is added — within the system

The EU debate about arbitration /2

However, both ISDS and ICS

- are only for foreign investors (class justice)
- require compliance with trade agreement only, not with national law or European treaties
- offer no possibility of appeal with national or European courts
- are used to pressure governments ('regulatory chill')
- create parallel justice system — can the EU do that?

The EU debate about arbitration /3

ICS, too, is controversial. Criticism by

- scientists (Gus Van Harten, Andreas Fisahn)
- judges (European association of judges, Deutscher Richterbund)
- NGOs (Client Earth, Friends of the Earth)

It is time to ask the European Court of Justice (ECJ) for an opinion.

The EU debate about arbitration /4

Asking an opinion from the ECJ can be done by

- European Commission ← Cecilia Malmström
- European Council ← our ministers
- European Parliament ← us
- Member states ← you

A big challenge...

The EU debate about arbitration /5

CETA is ready to go

- Negotiations are completed (including a last minute switch from ISDS to ICS)
- Legal scrubbing is done
- Translation to all 25 languages of the EU has been completed

The EU timeline /1

The decision making is about to start

- Final decision in Commission: 5th July
- Debate in Council: 22nd September
- Debate in Parliament: Winter 2016 (?)

- Two issues for Council
 - Approval of agreement text
 - Decision on competences: EU only, or mixed?

The EU timeline /2

- Since the Lisbon Treaty ('The European Constitution') trade deals have become a competence of the European Union
 - A qualified majority in the Council would suffice: 55% of member states, representing at least 65% of the EU population
 - Member states would have no say in the matter

But are TTIP and CETA simply trade deals?

The EU timeline /3

- An agreement can only be ‘EU only’ if it does not affect areas in which the EU has only shared competence
 - (e.g. agriculture, fisheries, environment)
- or supporting competence
 - (e.g. health, industry, education)
- In all other cases, the agreement has to be ‘mixed’, i.e. shared competence.

The Council wants a mixed agreement.

However, the Commission wants an EU only agreement.

The EU timeline /4

- The Council has the decisive vote. It can only change a proposal by the Commission by unanimity.
- A blocking minority (at least four Council members representing more than 35% of the EU population) can stop a proposal.
- Italy has said it will support the Council. Germany has said it will insist on mixity.
- Luxemburg has said it wants to wait for the advice of the European Court on the Singapore agreement.

The EU timeline /5

Dutch referendum

- Citizen's initiative
- Corrective, i.e. in response to a decision by the Dutch parliament
- Not possible if CETA is EU only

Irish referendum

- Obligatory if conflicting with Irish constitution

The EU timeline /6

- Inform yourself, and then others
- Sign stop-ttip.org
- Join the protests
- Write to your MP / MEP / union
- Come to Brussels on 20th September

What you can do

Dank je wel!
Tusen tack!
