



BRIEFING PAPER

Number 7492, 20 July 2018

CETA: the EU-Canada free trade agreement

By Dominic Webb

Inside:

1. Background
2. Details of the agreement
3. Controversial aspects
4. Ratification of CETA in European and UK Parliament
5. Impact of Brexit
6. Links to further information



Contents

Summary	3
1. Background	4
2. Details of the agreement	6
3. Controversial aspects	8
3.1 Investor protection	8
Legal challenge to CETA	10
3.2 Trade in services	11
4. Ratification of CETA in European and UK Parliament	13
4.1 CETA as a “mixed” agreement	13
4.2 Ratification in the EU	13
4.3 Provisional application	13
4.4 Consideration of CETA by UK Parliament	15
Designation as an EU treaty	17
4.5 Ratification in other EU Member States	17
4.6 Ratification in Canada	17
5. Impact of Brexit	18
6. Links to further information	19

Summary

The Comprehensive Economic and Trade Agreement (CETA) is a free trade agreement between the EU and Canada. CETA has been in force provisionally since September 2017. Most, but not all, of the agreement is in force.

CETA removes all tariffs on industrial products traded between the EU and Canada. Most were removed when the agreement came into force provisionally. 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.

The European Commission has put CETA forward as a “mixed agreement” which must be ratified by each EU Member State in addition to the European Parliament. This process could take a number of years. In the UK, the agreement must be laid before Parliament for a period of 21 sitting days. The agreement can only be ratified if the 21 day period has passed without either House having resolved that it should not be ratified. In the event of such a resolution by the Commons, a further period of 21 days is triggered during which the Commons can again raise objections. The Government announced on 21 May 2018 that it would soon be starting the formal ratification process in the UK. CETA was laid before the House of Commons on 13 June 2018. There is no *requirement* for a debate or vote on the agreement in the House of Commons. Furthermore, given government control of much of Parliamentary time in the Commons, passing a resolution against the agreement within the 21 day period may not be straightforward.

The agreement has been provisionally implemented since 21 September 2017, bringing most, but not all, of the agreement into force. The Commission has said that the controversial Investment Court System provisions will not be provisionally applied. They will not, therefore, come into force unless CETA is ratified by Member States.

Those in favour of CETA argue that it will boost trade between the EU and Canada. CETA has been described by the European Commission as “a milestone in European trade policy” and “the most ambitious trade agreement that the EU has ever concluded.” The European Commission argues that criticisms of the investment provisions are unfounded, claiming that CETA protects governments’ right to regulate and that the proposed Investment Court System is a fairer and more transparent replacement for the widely criticised Investor State Dispute Settlement (ISDS) provisions.

Critics argue that the agreement is unduly favourable to business and may lead to a lowering of regulatory standards. Opponents of CETA remain unconvinced by the reforms to the investment provisions, arguing that these give foreign investors special privileges and may deter governments from legislating in the public interest for fear of litigation. The Belgian government has asked the Court of Justice of the European Union for an opinion on the compatibility of CETA with EU law. A negative finding would raise serious questions about the future of CETA, at least in its current form. There have also been criticisms of the process of ratifying trade deals – in particular that CETA has been “provisional applied” – ie before parliaments in EU Member States have had a chance to ratify it.

While the UK remains in the EU, it will be subject to CETA’s provisions. The draft Withdrawal Agreement also envisages the UK being subject to the obligations of the EU’s trade agreements during the transitional (or implementation period). After that, the Government is seeking to roll over the EU’s existing trade agreements with third countries into equivalent UK agreements. The *Trade Bill* has been introduced to facilitate this.

1. Background

The Comprehensive Economic and Trade Agreement (CETA) is a trade deal between the EU and Canada. The European Commission has described CETA as “a milestone in European trade policy” and “the most ambitious trade agreement that the EU has ever concluded.”¹

UK exports to Canada were worth £9.0 billion in 2017 while imports amounted to £7.4 billion. Canada accounted for 1.5% of UK exports of goods and services and 1.1% of imports. Services accounted for around 42% of UK exports to Canada while UK imports were predominantly goods. The UK had an overall trade surplus with Canada of £1.6 billion in 2017. A surplus of £1.9 billion on trade in services was offset by a deficit of £0.3 billion on trade in goods.² There are more detailed statistics on UK trade with Canada in the Government’s [Impact Assessment](#).

Negotiations for this treaty began in May 2009 and were completed in August 2014. In July 2016, the European Commission proposed that the agreement be concluded and signed.³ CETA was signed on 30 October 2016. Its signature was delayed by a few days by objections from the Walloon Parliament. The EU and Canada have also signed a “Joint Interpretative Instrument” on CETA. This document, which will have legal force, clarifies what has been agreed by Canada and the EU in a number of controversial areas such as the Investment Court System, governments’ right to regulate, and labour and environmental standards.⁴ On 15 February 2017, the European Parliament gave its consent to the agreement.⁵ Parts of the agreement came into force provisionally on 21 September 2017.⁶

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 Government [Impact Assessment](#) said:

Our central estimate of CETA's net impact on UK GDP is £730 million per annum. In addition, we expect UK business to gain around £70 million from engaging in more public contracts in Canada, under the central scenario. Not all of these gains are expected to accrue in the first year that CETA is implemented.⁷

¹ European Commission Press Release, [European Commission proposes signature and conclusion of EU-Canada trade deal](#), 5 July 2016

² ONS, UK Economic Accounts, 29 March 2018

³ European Commission Press Release, [European Commission proposes signature and conclusion of EU-Canada trade deal](#), 5 July 2016

⁴ [The Joint Interpretative Instrument](#)

⁵ European Parliament Research Service, [CETA ratification process: Recent developments](#), June 2017

⁶ European Commission statement, [EU and Canada agree to set a date for the provisional application of the Comprehensive Economic and Trade Agreement](#), 8 July 2017

⁷ Department for International Trade, Impact Assessment of the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, IA DIT002, 17 May 2018, para 9.1

5 CETA: the EU-Canada free trade agreement

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.⁸

⁸ Cecilia Malmström [CETA Europe's Next Step](#), Speech at European Parliament, 9 December 2015

2. Details of the agreement

CETA removes customs duties on trade in industrial products between the EU and Canada. Most were removed when the agreement came into force provisionally in September 2017. 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.⁹

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.”¹⁰

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.¹¹

Another area covered by the agreement is 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 are associated with 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

⁹ For more detail on the provisions relating to agriculture, see European Parliament Research Service, [Agriculture in the EU-Canada Comprehensive Economic and Trade Agreement](#) (CETA), July 2016

¹⁰ European Commission website, [CETA](#)

¹¹ European Commission website, [CETA](#)

7 CETA: the EU-Canada free trade agreement

to products imported from European regions where they traditionally come from.¹²

Annex 20-A of CETA contains a list of these products. There are no UK products on the list.¹³

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

¹² European Commission website, [CETA](#)

¹³ [CETA Annex 20-A](#)

3. Controversial aspects

3.1 Investor protection

CETA contains controversial measures relating to investment. These were originally known as ISDS (Investor State Dispute Settlement) provisions. In response to concerns about ISDS, the European Commission and the Canadian Government announced, in February 2016, that they had agreed a new approach to investment protection and dispute settlement in CETA. This new approach, known as ICS (Investment Court System) is based on the EU's proposals in this area, made in the TTIP negotiations in November 2015.¹⁴

The Commission has stressed its view that these arrangements guarantee governments' right to regulate in the public interest. The Commission has said that the new system ensures "a high level of protection for investors while fully preserving the right of governments to regulate and pursue legitimate public policy objectives such as the protection of health, safety or the environment."¹⁵ The reforms also introduce an independent investment court system and include measures to introduce more transparency into dispute proceedings, and prevent conflicts of interest on the part of Tribunal members.

In a joint statement, Cecilia Malmström and Chrystia Freeland (then 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.¹⁶

Critics of the investment provisions say that they are still unduly favourable to multinational companies and argue that the change from ISDS to ICS does little to address the problem of foreign companies having recourse to special tribunals, outside the domestic legal system.

¹⁴ TTIP, the Transatlantic Trade and Investment Partnership, was a trade agreement being negotiated by the US and the EU. These negotiations are currently stalled.

¹⁵ European Commission, [Investment provisions in the EU-Canada free trade agreement \(CETA\)](#), February 2016

¹⁶ 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.

9 CETA: the EU-Canada free trade agreement

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.¹⁷

The main concern raised is that the investment provisions would allow foreign companies to sue governments in special tribunals outside the domestic legal system, if they have been adversely affected by changes in public policy. Critics argue that this constrains government action in the public interest in areas such as public health or environmental policy. There are also concerns that as only investors can bring claims, the system is biased in their favour: it is argued that those involved have an incentive to find in favour of the investor as this generates more work for the judges and lawyers involved.

Opponents also argue that CETA is a "Trojan horse" whereby US companies could make claims against EU policies using Canadian subsidiaries.¹⁸

A paper by Corporate Europe Observatory (and others) summed up the objections to ICS as follows:

it would empower thousands of companies to circumvent national legal systems and sue governments in parallel tribunals if laws and regulations undercut their ability to make money. It would pave the way for billions in taxpayer money being paid out to big business. It could curtail desirable policymaking to protect people and the planet. And it threatens to lock EU member states forever into the injustices of the ISDS regime.¹⁹

Over 100 legal academics published a statement setting out their objections to the investment provisions of CETA and TTIP.²⁰

Concerns have been raised that the UK could be tied into CETA's investment provisions for up to 20 years:

Campaign group Global Justice Now have also released an expert opinion on CETA and Brexit which argues that if the UK doesn't formally leave the EU before CETA is ratified, then it would be tied into the trade deal for a period of twenty years after announcing any intention to leave the deal.²¹

Article 30.9 paragraph 2 allows for the investment provisions to be effective for 20 years after the termination of the agreement:

¹⁷ Friends of the Earth Europe, [Dangerous CETA deal must be rejected](#), 29 February 2016

¹⁸ Pia Eberhardt, [The zombie ISDS](#), March 2016, p29

¹⁹ Pia Eberhardt, [The zombie ISDS](#), March 2016, p5

²⁰ Stop TTIP, [Legal Statement on Investment Protection in TTIP and CETA](#), 17 October 2016

²¹ Global Justice Now, [EU accused of trying to push through 'toxic' trade deal ahead of Brexit](#), 4 July 2016

Notwithstanding paragraph 1, in the event that this Agreement is terminated, the provisions of Chapter Eight (Investment) shall continue to be effective for a period of 20 years after the date of termination of this Agreement in respect of investments made before that date.²²

There is more information on CETA's investment provisions and governments' right to regulate in a [briefing](#) by the European Parliament Research Service.²³

Legal challenge to CETA

On 6 September 2017, Belgium submitted a request to the CJEU for an opinion on CETA's compatibility with EU law. This was part of an agreement with Wallonia which had previously threatened to block CETA. Specifically, Belgium asked for a ruling on the compatibility of the ICS with:

- CJEU's exclusive competence to definitively interpret EU law (principle of autonomy of EU law);
- general principle of equality and 'practical effect' requirement of EU law;
- right of access to the courts; and
- right to an independent and impartial judiciary.²⁴

A note by the European Parliament Research Service said:

The forthcoming CJEU opinion could have far-reaching consequences for Belgium and other Member States' willingness – and even their ability – to ratify CETA. A negative opinion could therefore put CETA's future in jeopardy (at least in its current form). A positive opinion, on the other hand, would strengthen CETA's legitimacy and see the legal controversy surrounding the ICS die down.

The CJEU's opinion will also be a first serious legal test for the European Commission's plans to establish a Multilateral Investment Court (MIC), for which CETA's bilateral ICS is viewed as a stepping stone.²⁵

A ruling by the CJEU in another case, *Achmea*²⁶, has led some to predict that the ECJ is likely to find against the investment provisions of CETA.

For example:

Indeed, it seems to me that the arguments put forward in *Achmea* can be extended to extra-European investment protection regimes, such as the one foreseen in the CETA Agreement with Canada. We cannot exclude, of course, that the ECJ will distinguish the latter agreement from intra-European BITs, but the level of abstraction of the Grand Chamber's position in *Achmea* indicates that we should expect the CETA rules to fall

²² [CETA text](#)

²³ European Parliament Research Service, [CETA: Investment and the right to regulate](#), February 2017

²⁴ European Parliament Research Service, [CETA ratification process: Latest developments](#), October 2017

²⁵ *Ibid.*

²⁶ The *Achmea* case related to a bilateral investment treaty (BIT) between Slovakia and the Netherlands. The CJEU ruled that the arbitration clause in the BIT is incompatible with EU law (see [CJEU press release](#), 6 March 2018)

foul of the autonomy of EU law for at least four legal considerations.²⁷

And:

last year Belgium requested the CJEU for an Opinion under Article 218(11) TFEU on whether the CETA ISDS mechanism is compatible with EU law. A similar mechanism was included in the EU-Vietnam FTA as well. There are strong signals now, as I have also argued several years ago, that such a standing Investment Court might also put into jeopardy the autonomy of the EU legal order, especially the jurisdiction of the CJEU to interpret and apply EU law. It is quite possible now that the Investment Court under CETA will be incompatible with EU law.²⁸

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. Some service sectors were excluded from the outset by the EU in the negotiating mandate given to the Commission.²⁹ These included “audio-visual and other cultural services” as well as “services supplied in the exercise of governmental authority”.³⁰ According to a note prepared for the European Parliament, public services excluded from CETA include health, education and other social services.³¹

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.

²⁷ Von Daniel Thym, [The CJEU ruling in Achmea: Death Sentence for Autonomous Investment Protection Tribunals](#), EU Law Analysis, 9 March 2018

²⁸ Szilard Gaspar Szilagyi, [The CJEU strikes again in Achmea. Is this the end of Investor-State arbitration under intra-EU BITs](#), International Law and Economic Policy blog, 7 March 2018

²⁹ [CETA negotiating mandate](#), 2009

³⁰ As defined by Article I-3 of GATS. For more on this, see https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm

³¹ European Parliament, [Negotiations on the EU-Canada Comprehensive Economic and Trade Agreement \(CETA\) concluded](#), October 2014

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.³²

There are criticisms of CETA in other areas. For example, Nick Dearden of Global Justice Now, argued in an article in the Guardian that trade deals such as CETA and TTIP were a means for big business to increase their power over society. He said:

The whole purpose of Ceta is to reduce regulation on business, the idea being that it will make it easier to export. But it will do far more than that. Through the pleasant-sounding “regulatory cooperation”, standards would be reduced across the board on the basis that they are “obstacles to trade”. That could include food safety, workers’ rights and environmental regulation.³³

³² Unison, [TTIP, CETA and TISA – what you need to know about EU trade agreements](#), March 2015, p3

³³ Nick Dearden, [Think TTIP is a threat to democracy? There’s another trade deal that’s already signed](#), Guardian, 30 May 2016

4. Ratification of CETA in European and UK Parliament

4.1 CETA as a “mixed” agreement

The ratification process depends on whether the agreement is a “mixed” agreement. This type of agreement includes areas where Member States as well as the EU exercise competence. If this is the case, it must be ratified by all Member States as well as the European Union (i.e. the Council, acting by qualified majority and in some cases by unanimity – see Article 218 Treaty on the Functioning of the European Union), with the consent of the European Parliament in most cases. By contrast, an “EU only” agreement only requires ratification by the European Union (the Council).

The Commission said in July 2016 that CETA was being put forward as a mixed agreement. Press reports indicated, however, that the Commission had been hoping to classify the agreement as EU-only but backed down in the face of opposition from some Member States.³⁴ The trade commissioner, Cecilia Malmström, said that from a strict legal point of view, the Commission thought that CETA was an EU-only deal but acknowledged political problems with this and said that CETA was being put forward as a mixed agreement to allow for speedy signature:

From a strict legal standpoint, the Commission considers this agreement to fall under exclusive EU competence. However, the political situation in the Council is clear, and we understand the need for proposing it as a 'mixed' agreement, in order to allow for a speedy signature³⁵

The need for ratification of CETA by national parliaments is likely to slow down ratification of the agreement.

4.2 Ratification in the EU

On 5 July 2016, the Commission proposed to the Council that CETA be signed and concluded (ie ratified).³⁶ The Commission also proposed provisional application of the agreement (see section 4.3 below). CETA was signed on 30 October 2016. On 15 February 2017, the European Parliament gave its consent to the agreement.³⁷

4.3 Provisional application

As a mixed agreement, CETA will need to be approved by EU Member States in accordance with their own national procedures before it can fully come into effect. It has been suggested that this could mean

³⁴ Juncker to give way on EU-Canada trade plan, Financial Times, 4 July 2016

³⁵ European Commission Press Release, [European Commission proposes signature and conclusion of EU-Canada trade deal](#), 5 July 2016

³⁶ European Commission Press Release, [European Commission proposes signature and conclusion of EU-Canada trade deal](#), 5 July 2016

³⁷ European Parliament Research Service, [CETA ratification process: Recent developments](#), June 2017

approval by as many as 38 parliamentary chambers, including regional ones.³⁸

However, trade agreements may be applied provisionally before the ratification process in the Member States is complete, provided the European Parliament gives its consent and with the agreement of the Council.³⁹ Assuming these conditions are met, the vast majority of CETA's provisions will be provisionally applied (98% according to an article in the Financial Times).⁴⁰ Provisional application had been expected to take place in spring 2017.⁴¹ It was announced in July 2017 that CETA would be provisionally applied from 21 September 2017.⁴² The controversial Investment Court System will not be included in provisional application.⁴³ The UK Government supports provisional application.⁴⁴

An answer to a question in the European Parliament said that if ratification of CETA failed due to a ruling of a constitutional court or other constitutional process, provisional application would be terminated:

As highlighted in the Council Declaration accompanying CETA, if the ratification of CETA fails permanently and definitively in a Member State because of a ruling of a constitutional court, or following the completion of other constitutional processes, provisional application must be and will be terminated. A Member State can trigger a process to terminate provisional application. However, it should be stressed that a decision of the EU institutions can only be reversed by the same EU institutions.⁴⁵

The Stop-TTIP campaign has said that most of the agreement could be provisionally implemented:

the most likely scenario is the one that will see CETA proceeding for ratification in the EU Parliament late this year and then, with the Council's blessing, more than 90% of CETA will enter into force. The remaining bits of it will require ratification by national parliaments. In other words, this procedure bypasses national parliaments and de facto undermines the Commission's proposal on shared competences.⁴⁶

³⁸ "National ratification issue could derail EU-Canada trade deal", Financial Times, 3 July 2016

³⁹ European Commission, [CETA – a trade deal that sets a new standard for global trade – fact sheet](#), 29 October 2016

⁴⁰ EU and Canada sign deal amid fears about future of trade policy, Financial Times, 30 October 2016

⁴¹ House of Commons European Scrutiny Committee, [Thirteenth Report of Session 2016-17](#), 18 October 2016, HC 71-xi para 1.2

⁴² European Commission statement, [EU and Canada agree to set a date for the provisional application of the Comprehensive Economic and Trade Agreement](#), 8 July 2017

⁴³ European Commission press release, [EU-Canada summit: newly signed trade agreement sets high standard for global trade](#), 30 October 2016

⁴⁴ European Scrutiny Committee, [Oral evidence on Parliamentary scrutiny of EU Trade Deal: EU Comprehensive Economic and Trade Agreement \(CETA\)](#), 26 October 2016, HC792, Q1

⁴⁵ [European Parliament, Parliamentary question 1 March 2017](#)

⁴⁶ Stop-TTIP, [The Commission of Illusionists](#), blog post, 29 July 2016. The UK Government's [Explanatory Memorandum](#) on the EU-Republic of Korea Trade Agreement said that the EU and Korea would provisionally apply all the commitments over which they hold competence "which is the vast majority".

Groups campaigning against CETA are also opposed to its provisional application on the grounds that it is undemocratic.⁴⁷

4.4 Consideration of CETA by UK Parliament

Consideration by Parliamentary Committees

In September 2016, the House of Commons European Scrutiny Committee recommended that there be an early debate on CETA on the Floor of the House for the following three reasons:

- It raises complex legal and policy issues for the UK, both while it is a Member of the EU and after its withdrawal from the EU, which the Government has as yet failed to adequately address (including on issues of competence, provisional application and the implications of Brexit);
- The trade deal continues to generate significant public interest (for example, various stakeholders across the EU have raised strong opposition to its investment provisions); there is a general need for more transparency in trade negotiations and their conclusion to ensure their democratic legitimacy; and
- Although there is parliamentary control over ratification of treaties, such a debate would provide the only opportunity for the House of Commons as a whole to scrutinise and have a say on the Government's position on CETA before it is signed and then implemented.⁴⁸

In October 2016, the Committee granted a conditional scrutiny waiver for signature of the agreement, recognising the time constraints involved in arranging a debate before CETA was signed. This was granted on condition that the debate on the Floor of the House be scheduled urgently to allow consideration of CETA before its provisional application in 2017.⁴⁹

The Committee held an oral evidence session on CETA on 26 October 2016 at which the Chair, Sir William Cash, said that the Government's decision to agree to CETA's provisional application and to its conclusion "constitutes an override of our scrutiny reserve resolution".⁵⁰ Appearing before the Committee, Dr Liam Fox, Secretary of State for International Trade, said:

I am sorry that the timescales meant that it was not possible to have a debate before decisions needed to be made on CETA in the Council. This was down to the parliamentary calendar and the timescale set for us. However, I therefore reinforce my

⁴⁷ See, for example, Stop-TTIP, [The Commission of Illusionists](#), blog post, 29 July 2016 and Global Justice Now, [EU ambassador to Canada says EU-Canada free trade deal may become UK law without UK parliamentary debate](#), 23 January 2016

⁴⁸ House of Commons European Scrutiny Committee, [Tenth Report of Session 2016-17](#), HC 71-viii, 13 September 2016, p3

⁴⁹ House of Commons European Scrutiny Committee, [Thirteenth Report of Session 2016-17](#), 18 October 2016, HC 71-xi p4

⁵⁰ European Scrutiny Committee, [Oral evidence on Parliamentary scrutiny of EU Trade Deal: EU Comprehensive Economic and Trade Agreement \(CETA\)](#), 26 October 2016, HC792, Q1

commitment to the Committee today to hold such a debate. I am very happy to have that debate on the Floor of the House.⁵¹

There was a [debate](#) on CETA in House of Commons European Committee B on Monday 6 February 2017, not on the Floor of the House. The Government [won a vote in the Commons on 8 February by 409 votes to 126](#).

Ratification procedures

Parliament cannot amend the CETA agreement: it can only accept it or object to it. The procedure by which Parliament ratifies treaties is set out in the *Constitutional Reform and Governance Act 2010 (CRAGA)*, sections 20 to 25.⁵²

Mixed agreements requiring ratification must be laid before Parliament along with an Explanatory Memorandum. Both the agreement and the memorandum are laid before Parliament for 21 sitting days (defined as days when both the Commons and Lords are sitting). The agreement can be ratified if the 21 day period has passed without either House having resolved that the agreement should not be ratified.

If either House passes a resolution objecting to ratification, the Government must then give reasons why it still wants to ratify the agreement. If the Commons objects to ratification, it has another 21 days to consider the Government's reasons for ratification and can object again. The agreement may only be ratified if this further period of 21 days has passed without the Commons having resolved that the treaty not be ratified. This process can continue indefinitely giving the House of Commons the power to block ratification. The House of Lords has only one opportunity to object so can only delay ratification briefly.

Neither House has used this power so far. Furthermore the CRAGA provisions do not *require* a debate or vote in either House. There could also be issues with finding a way to secure a resolution against a treaty within the 21 day period. A [blog post](#) by the Hansard Society said:

Because of the government's control of the parliamentary timetable there, the House of Commons, in particular, could face similar procedural difficulties in expressing itself against ratification of an international agreement.⁵³

There is more information on this issue in [Parliament's role in ratifying treaties](#) (Commons Library Research Paper 5855) and [The Trade Bill](#) (Commons Library Research Paper 8073) – see section 6. The International Trade Committee has also announced an [inquiry](#) into UK Trade Policy Transparency and Scrutiny.

⁵¹ European Scrutiny Committee, [Oral evidence on Parliamentary scrutiny of EU Trade Deal: EU Comprehensive Economic and Trade Agreement \(CETA\)](#), 26 October 2016, HC792, Q1

⁵² This section is based on, and there is more information in, [Commons Library Briefing Paper 7192, EU External Agreements: EU and UK procedures](#), 28 March 2016

⁵³ Brigid Fowler, Trade Bill highlights Parliament's weak international treaty role, Hansard Society blog, 9 January 2018

Designation as an EU treaty

For mixed agreements which include provisions that need to have effect in UK law, the agreement is 'designated' as an EU treaty for the purposes of the *European Communities Act 1972 (ECA)*. This means that the *ECA* applies to it as if it were one of the EU Treaties. It enables UK courts to recognise any direct effect arising from provisions of the agreement and gives a Minister the power to adopt UK subordinate legislation to implement the agreement in the UK. Designation of the agreement as an EU Treaty is via secondary legislation: a draft Order in Council is laid before Parliament and may be debated and/or approved by both Houses by the affirmative procedure.⁵⁴ In a [written statement](#) on 21 May 2018, the Government announced on that it was laying the [European Union \(Definition of Treaties\) \(Canada Trade Agreement\) Order 2018](#).⁵⁵ A motion relating to this Order was [debated](#) in the House of Commons on 26 June 2018 and approved by 315 votes to 36.

The written statement also said that the laying of the Order would soon be followed by the laying of the CETA text as a Command Paper under the CRAGA procedures. This took place on 13 June 2018.⁵⁶ The Command Paper and accompanying Explanatory Memorandum are available on the Foreign and Commonwealth Office Treaties [website](#).

4.5 Ratification in other EU Member States

CETA has already been ratified by the Czech Republic, Denmark, Estonia, Spain, Croatia, Malta and Portugal.⁵⁷

Recent press reports indicate that Italy may not ratify CETA due to concerns over protection of the names of food products associated with a particular location (geographical indications).⁵⁸

4.6 Ratification in Canada

CETA was ratified in Canada on 17 May 2017.⁵⁹

⁵⁴ There is more information in, [Commons Library Briefing Paper 7192, EU External Agreements: EU and UK procedures](#), 28 March 2016

⁵⁵ HC Deb 21 May 2018 HCWS700

⁵⁶ House of Commons, [Votes and Proceedings](#), 13 June 2018, p12, House of Lords, [Minutes of Proceedings](#), 13 June 2018

⁵⁷ HM Government, [CETA Explanatory Memorandum](#), para 8

⁵⁸ Italy threatens to scupper EU's trade deal with Canada, Financial Times, 14 June 2018

⁵⁹ [Canada ratification upsets Macron's promises on CETA](#), Euractiv, 26 May 2017

5. Impact of Brexit

The UK is subject to all rights and obligations arising from CETA while it remains in the EU.⁶⁰ During the transitional/implementation period, the UK will be bound the obligations of the EU's agreements with third countries under the terms of the draft withdrawal agreement. The UK Government wishes that UK be treated as if it were an EU Member State during the transition period.⁶¹ The Government's aim is to roll over the EU's trade agreements into equivalent UK-third country agreements. The [Trade Bill](#) has been introduced to facilitate this.⁶² It was reported in September 2017 that the Canadian Government was looking for a "seamless transition" of its trading relations with the UK after Brexit.⁶³

The issue of what happens to UK participation in EU trade agreements after Brexit was the subject of a [report](#) by the International Trade Committee.⁶⁴ In its response to this report, the [Government set out its view](#) on how these EU agreements with third countries would apply to the UK after Brexit:

As agreed at March European Council, the EU has stated in the draft Withdrawal Agreement that the UK is to be treated as a Member State for the purposes of international agreements during the Implementation Period.

It is a process of transition, rather than a new agreement. The EU's notification is expected to cover the UK and all Member States' agreement to this approach.

In parallel to this, we continue to work bilaterally with partner countries to ensure continuity of effect for our international agreements beyond the Implementation Period. Discussions have been positive so far. This will enable us to work for continuity in a range of scenarios.

[...]

It remains the case that all partner countries are committed to ensuring there is no disruption to our trading relationship. We have a mature relationship with our partner countries, and in discussions cover a range of scenarios to ensure continuity.

In parallel to arrangements for the Implementation Period, the Government continues the important work with partner countries to ensure continuity of effect of our international agreements beyond the Implementation Period, to avoid any disruption in trade from January 2021 onwards.⁶⁵

⁶⁰ [PQ 41487](#) 6 July 2016

⁶¹ HM Government, [Technical Note: International Agreements during the Implementation Period](#), 8 February 2018

⁶² See also [The Trade Bill](#), Commons Library Briefing Paper, CBP 8073

⁶³ ['Brexit boost for Theresa May as Justin Trudeau promises seamless trade deal'](#), *Independent*, 18 September 2017

⁶⁴ International Trade Committee, Continuing application of EU trade agreements after Brexit, HC 520, 28 February 2018

⁶⁵ International Trade Committee, Continuing application of EU trade agreements after Brexit: Government Response to the Committee's First Report, 15 May 2018, HC 1042, p4, 5

6. Links to further information

European Commission

[Text of CETA](#)

Commission [CETA website](#)

[CETA – Summary of the final negotiating results](#), February 2016

House of Commons Committees

House of Commons International Trade Committee [inquiry on CETA](#)

International Trade Committee, [Continuing application of EU trade agreements after Brexit](#), 28 February 2018, HC 520

International Trade Committee, Continuing application of EU trade agreements after Brexit: [Government Response](#) to the Committee's First Report, 15 May 2018, HC 1042

Canadian Government

[Canada – European Union Comprehensive Economic and Trade Agreement](#)
(contains overview of agreement and chapter summaries)

European Parliament Research Service briefings

[Is CETA a mixed agreement?](#), 1 July 2016

[Agriculture in the EU-Canada Comprehensive Economic and Trade Agreement \(CETA\)](#), July 2016

[A guide to EU procedures for the conclusion of international trade agreements](#),
October 2016

[Comprehensive Economic and Trade Agreement \(CETA\) with Canada](#), January 2017

[CETA: Investment and the right to regulate](#), February 2017

[CETA ratification process: Recent developments](#), October 2017

Criticisms of CETA

Global Justice Now, [CETA](#)

[Stop TTIP](#)

Corporate Europe Observatory (and others), [The zombie ISDS](#), by Pia Eberhardt,
March 2016

Corporate Europe Observatory, [The great CETA swindle](#), November 2016

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publically available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcinfo@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).