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Update on CETA April 2017

What is CETA?

The Comprehensive Economic and Trade Agreement (CETA) is a so-called 'new generation trade deal' between the European Union and Canada. It aims to facilitate trade in goods and services by drastically reducing tariffs (such as import duty on goods) and non-tariff barriers (such as health and safety regulations). CETA will increase Canadian-based corporations' access to UK markets, including those in NHS services and public procurement (i.e. the purchase of work, goods and services for government departments or local authorities – in the NHS, this could cover the purchasing of pharmaceuticals and medical equipment, construction contracts for new health facilities, or health care services, for example).

CETA also includes a form of investment protection known as 'Investor Court System (ICS). This gives corporations the right to by-pass domestic courts and use special off-shore tribunals to directly sue elected governments on decisions that affect corporate profits. The European Parliament rejected a request by 89 MEPs to refer CETA to the European Court of Justice for its opinion on whether ICS runs counter to the rights of governments to regulate.

For more details on CETA, see. e.g., <http://www.patients4nhs.org.uk/the-eu-ftas/>

Progress

Like other EU treaties, the European Commission negotiated CETA on behalf of all the EU member states. However, with CETA, the EU does not have 'exclusive competence' (where the EU can act without reference to EU member states) and so, besides needing to be approved by the European Parliament, CETA must also be ratified by the parliaments of the EU's member states.

The European Parliament approved CETA in February 2017. Subsequently, even though it has not yet come before the member states' parliaments, about 90% of CETA's measures can be provisionally implemented (exceptions include ICS and measures concerning labour rights). Canada is seeking to provisionally apply the deal by July 1st this year.

It may take a number of years for CETA to come before the EU member states' national and federal parliaments (38 in all) to be fully ratified. CETA could fall at this final hurdle if just one of the 38 votes against it. And despite huge pressure on member states to endorse CETA, there is a possibility that about six countries, or a federal state like Wallonia (a self-governing region in Belgium), might veto it, especially if ICS is not modified.

If the deal is not ratified there is some confusion about whether, or how, provisional implementation can be undone.¹

¹ (<http://canadians.org/blog/trudeau-seeks-provisionally-apply-ceta-july-1-wallonia-threatens-block-final-ratification-deal>)

The UK position

If CETA comes to the UK Parliament before Brexit, there is no hope that the UK will vote against it. There has been little opposition to CETA on the part of the main political parties and the UK Parliament was keen to proceed with provisional application of the treaty (provided it did not include ICS): it allowed this to happen without any meaningful parliamentary debate or scrutiny.² EU free trade agreements do not require incorporation in UK law to be provisionally applied.

In addition, if CETA comes to the UK Parliament, the process for ensuring a parliamentary debate and vote on whether to ratify the treaty is deeply flawed: it seems, for example, that even if a vote takes place, according to the Constitutional Reform and Governance Act 2010, Section 20, there is no way for the UK to conclusively veto the agreement.³

CETA and Brexit

If CETA is provisionally implemented while the UK is still in the EU, then the UK will be subject to all rights and obligations arising from the agreement while it remains a Member State.

If CETA is fully ratified by all EU member states before we leave the EU, it appears that any investment made by Canadian corporations (or multinational corporations with subsidiaries in Canada) during the period of provisional implementation would be protected by ICS for a further 20 years, even though we would be outside the EU.

More information:

- http://www.globaljustice.org.uk/sites/default/files/files/resources/2nd_edition_ceta_briefing_2016.pdf?_ga=1.41396769.2066175437.1462111904
- <http://hsfnotes.com/arbitration/2016/12/21/ceta-update-ceta-is-signed-provisional-application-of-ceta-and-brexit-first-government-to-government-meeting-to-discuss-establishing-the-multi-lateral-investment-court-system/>
- researchbriefings.files.parliament.uk/documents/CBP-7492/CBP-7492.pdf
- <https://opendemocracy.net/ournhhs/jan-savage-gay-lee/brexit-or-no-brexit-so-called-trade-deals-still-threaten-our-nhs>

²http://europeanmemoranda.cabinetoffice.gov.uk/files/2016/10/Letter_to_HoC_Scrutiny_Committees_-_CETA1.pdf

³ <http://www.legislation.gov.uk/ukpga/2010/25/section/20>.