

*The Comprehensive Economic and Trade Agreement (CETA) between
Canada and the European Union and its Member States:
Implementation process and discussion of the economic changes it
brings.*

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ABSTRACT

The Comprehensive Economic and Trade Agreement, or CETA, is a free trade, mixed, bilateral agreement between the European Union (EU) and Canada. A mixed agreement is an agreement that can be concluded by the Union jointly with all or some Member States. The agreement covers practically all sectors and aspects of Canada-EU trade, aiming at the elimination or reduction of barriers.

Due to the existence of the single trade market, the EU is one of the leading powers in the field of trade (G7), yet in order to remain competitive, it needs to enhance its trade ties with states outside the Union, as export earnings reduce pressure of public finances and create 15,000 more workplaces per 1 billion of income. From the perspective of the EU, the promotion of trade between the EU and Canada through CETA will create career opportunities, economic expansion and new prospects for businesses, potential employers, and job candidates, the reason being that Canada is a wide commodities marketplace for Europe's exports. In addition, Canada is a country opulent in natural resources that Europe needs. According to the European Commission, "CETA is a progressive trade agreement, which has some of the strongest commitments ever included in a trade deal to promote labour rights, environmental protection and sustainable development. CETA integrates the EU's and Canada's commitments to apply international rules on labour rights, environmental protection and climate action. And these obligations are binding."

From the perspective of Canada, CETA reflects the finest in international trade accords, setting new norms for goods and services trade, non-tariff barriers, investment, government procurement, and other sectors such as labour and the environment. Canada recognises the EU as one of the world's largest economies, the world's second-largest goods importer and Canada's second-largest trading partner following the United States, let alone that the value of the EU's annual imports exceeds the value of Canada's GDP. Hence, the Government of Canada acknowledges that CETA offers Canadian exporters a competitive advantage in the global market, by providing them with the opportunity to introduce new markets in the EU, which is beneficial for the Canadian economy and citizens as well.

Long before CETA existed as a concept, the first stepping-stone towards a European – Canadian economic partnership was the appointment of the first Canadian Ambassador to the European Economic Community (EEC), in 1958. Almost twenty years later, in 1976, Canada became the first industrialized third country, with which the EEC signed an international agreement. The "Framework Agreement for Commercial and Economic Co-operation" was a mutual commitment "to develop and diversify their reciprocal commercial exchanges and to foster economic co-operation." Said treaty provided the impetus for the implementation of further agreements, which included a spectrum of sectors, varying from trade goods to nuclear research.

LIST OF ABBREVIATIONS

ACTA	Anti-counterfeiting Trade Agreement
CETA	Comprehensive Economic and Trade Agreement
DSB	Dispute Settlement Body (WTO)
EU	European Union
Eurostat	Statistical Office of the European Communities
FQD	Fuel Quality Directive
GDP	Gross Domestic Product
IPR	Intellectual Property Rights
MEP	Member of European Parliament
SIA	Sustainability Impact Assessment
SPA	Agreement on Strategic Partnership
TBT	Technical Barriers to Trade Agreement
WTO	World Trade Organization

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1. INTRODUCTION

In the words of Malcolm Shaw, “Treaties are express agreements and are a form of substitute legislation undertaken by states. They bear a close resemblance to contracts in a superficial sense in that the parties create binding obligations for themselves, but they have a nature of their own which reflects the character of the international system. The number of treaties entered has expanded over the last century; witness the growing number of volumes of the United Nations Treaty Series or the United Kingdom Treaty Series. They fulfil a vital role in international relations.”¹

A number of multilateral and bilateral treaties between states and/or international organizations form international relations. In the case of the EU, the Founding and Accession Treaties are binding agreements between the EU member states, which establish new EU objectives, rules for EU institutions, clarify how decisions are made, and define the relationship between the EU and its member states.² The EU has also developed an internal single market through a standardized system of laws that apply in all member states in those matters, and only those matters, where members have agreed to act as one. EU policies aim at ensuring the free movement of individuals, products, services and capital within the internal market, implementing justice and home affairs laws and maintaining common trade, agricultural, fisheries and regional development policies.³

Meanwhile, the EU as a whole initiates negotiation procedures and concludes trade agreements with third countries and other unions (e.g. MERCOSUR), yet the member states of the EU have to approve of them before the agreements can take full effect. The EU is involved in economic diplomacy since the establishment of the Single Market and the ensuing negotiations for trade and economic partnership agreements conducted by the EU’s Directorate-General for Trade (DG Trade) for all EU member states (MSs).⁴ The significant novelty envisaged by the Lisbon Treaty refers to the development of EU external action competences, including economic diplomacy, external assistance and trade execution, the primary elements of business or corporate diplomacy that was once firmly under the control of individual member states.

In this context, the present study aims to present the process followed by Canada and the EU in order for them to implement the Comprehensive Economic and Trade Agreement (CETA) as long as the bilateral economic amendments that may occur. Moreover, it documents the procedure from the beginning of the bilateral dialogue and the initiation of the treaty, through the negotiations on diplomatic and political level to the final text of the treaty and its ratification by the EU legislative bodies and

¹ SHAW, M., 2008. *International Law*. 6th ed. Cambridge University Press, p. 94 para. 2.

² “EU treaties | European Union”, in European Union, 2019 [online]. Available at: https://europa.eu/european-union/law/treaties_en (last accessed on October 19th, 2021).

³ “The EU in brief | European Union”, in European Union, , 2019, [online] Available at: https://europa.eu/european-union/about-eu/eu-in-brief_en (last accessed on October 19th 2021)

⁴ “Strengthening European Commercial Diplomacy: Prospects and Challenges”, in IAI Istituto Affari Internazionali, 2019 [online]. Available at: <https://www.iai.it/en/pubblicazioni/strengthening-european-commercial-diplomacy-prospects-and-challenges> (last accessed on October 19th, 2021).

the national parliaments, as well as the joined committees, which aim at the better implementation of the agreement.⁵

The second part of the study focuses on the trade deal itself and the economic ties which unite the EU and Canada, the trade barriers and the respective facilitation, including the benefits of the treaty for both sides and all stakeholders, regarding customs tariffs, subsidies, the protection of investments and labour as well as the benefits for the enterprises. Criticism against CETA is also included, as the treaty is accused of threatening public goods,⁶ lack of public scrutiny and that it may jeopardize the investment arbitrations. Finally, the accusations for the environmental dangers (pesticides) in an era of climate imbalance could not be mentioned in this context.⁷

To summarize, the importance of this study lies in the analysis of the implementation of a common policy regarding trade in the complex functional environment of the EU, which is the world's largest trading block, as well as in the collaboration of all EU member states as an entity against third parties.

⁵ In Trade.ec.europa.eu, 2019 [online]. Available at: http://trade.ec.europa.eu/doclib/docs/2018/october/tradoc_157470.pdf (last accessed on October 19th, 2021).

⁶ Dearden N., "Think TTIP is a threat to democracy? There's another trade deal that's already signed | Nick Dearden", in the Guardian, May 30th 2019, <https://www.theguardian.com/commentisfree/2016/may/30/ttip-trade-deal-agreements-ceta-eu-canada> (last accessed on October 19th, 2021).

⁷ in Ciel.org, 2019, <https://www.ciel.org/reports/ceta-threatens-eu-members-states-ability-effectively-regulate-dang> (last accessed on October 19th, 2021).

CHAPTER 2. THE INITIATION OF BILATERAL DIALOGUE FOR THE CREATION OF A TREATY

In the beginning of the creation of an agreement, when mutual interest is expressed, the Commission commences an evaluation of an agreement's potential impact, a public consultation on what the agreement should accomplish in the first place, and an informal scoping exercise, which establishes and defines what both parties desire to negotiate. Furthermore, the Commission endorses a recommendation to the Council to outset the dialogue, and probably forwards a proposal text with negotiating directives. Afterwards, the Commission notifies the Parliament and automatically forwards its directives to the Council, the Parliament and all 27 EU national Parliaments, and the respective online publications follow. Later, the Council passes a resolution authorizing the Commission to begin discussions. This decision may also contain nonbinding negotiating directions to the Commission. Subsequently, the EU's Chief Negotiator in the Commission's Directorate-General for Trade (DG Trade) assembles a negotiating team. It is composed of specialists coming from all member states represented in the Commission on the issues that need to be negotiated.⁸

Negotiating rounds are set up by both parties' chief negotiators. These may cover the whole scope of the negotiations or simply a subset of them. The Commission reports to both Council and European Parliament after each round of discussions, as well as in other critical moments during the process. Ahead of remitting its negotiating ideas to its counterparts, the Commission confers with the Council and informs the European Parliament. In addition, the Commission publishes a report on each negotiation round as well as its initial negotiating offers online (at ec.europa.eu/trade) and consults the Trade Policy Committee (TPC) of the Council, which supports the Commission in its negotiating responsibilities. Through each phase of the negotiations, the Commission regularly updates the European Parliament on the latest developments. The Council's trade committee (TPC) and the Parliament's International Trade Committee (INTA) hold regular meetings to discuss the progress of discussions and to agree on their position for the future of the negotiation. National prime ministers or the European Parliament itself might enter the negotiation rounds (Trade negotiations - step by step).⁹

2.1 Preparations for the foundation of the treaty

Five years prior to the initiation of the CETA agreement, on the 19th of December 2002, at the Canada-EU Summit in Ottawa, leaders from both sides issued a joint statement. Further on, they announced that they have reached a mutual agreement for the creation of a new form of forward-thinking, broad-reaching bilateral trade and investment promotion agreement that would address, among other things, new generation challenges and lingering impediments. The Commission President Romano Prodi, then President of the Council Anders Fogh Rasmussen, and then

⁸ Negotiating EU trade agreements. 2012. Page 4 Preparing Para 1-4 [online]. Available at: https://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf (last accessed on October 19th, 2021).

⁹ Op. cit. n. 14, para. 5-9.

Canadian Prime Minister Jean Chrétien issued a joined statement.¹⁰ They stated that this initiative was created after revising the results of the respective evaluation of the bilateral progress made under the 1976 Framework Agreement for Commercial and Economic Cooperation and the 1998 EU-Canada Trade Initiative.¹¹

At the Canada-EU Summit in Ottawa, on March 18th 2004, leaders agreed to a common framework for a Trade and Investment Enhancement Agreement (TIEA). On December of 2004 the government of Canada and the EU Commission adopted a voluntary framework for regulatory cooperation. The first round of negotiations towards the TIEA took place in Brussels in May 2005. However, in 2006 Canada and the EU jointly decided to pause negotiations.¹²

A year later, in 2007, at the EU-Canada Summit in Berlin, Canadian and EU leaders mutually agreed to conduct a joint study examining the costs and benefits of pursuing a closer economic partnership (Chronology of events and key milestones, n.d.).¹³ According to the European Commission (2008), the annual EU-Canada Summit took place in Quebec City on Friday, 17th of October 2008. The European Commission was represented by its then President, José Manuel Barroso, who participated alongside French President Nicolas Sarkozy, in his then role as President of the Council. The country's Prime Minister Stephen Harper represented the Canadian side. The agenda revolved around the financial crisis and the global economy, as well as around boosting EU-Canada economic relations. The Summit also considered regional issues, such as Afghanistan, where the EU and Canada were co-operating closely together to promote good governance, sound development and the rule of law.¹⁴

President Barroso commented: *“At the end of a week in which we have been reminded of the global financial crisis and the EU has taken decisive action to restore financial stability and protect depositors, it is all the more timely that we should meet with our long-standing strategic ally and G8 partner Canada. It is important for us to remind ourselves that EU-Canada trade and investment relations are the bedrock of our relationship. That is why I am glad to see that the joint study we have now concluded predicts economic gains for both sides from a closer economic partnership. I will be looking to this week's Summit to launch the process towards a new and ambitious economic agreement. It is important that we get off on the right footing by carrying*

¹⁰ COMMUNICATION FROM THE COMMISSION on EU-Canada Relations. 2003, p. 2, para. 1 Retrieved from <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0266:FIN:EN:PDF> (last accessed on October 19th, 2021).

¹¹ Foreign affairs and international trade Canada. *Joint Statement by Canada and the European Union - Ottawa* [online]. 2002. Available at: http://www.sice.oas.org/TPD/CAN_EU/Negotiations/Dec2002_e.pdf (last accessed on October 19th, 2021).

¹² Sice.oas.org. n.d. *SICE: Trade Policy Developments: Canada-European Union* [online]. Available at: http://www.sice.oas.org/TPD/CAN_EU/CAN_EU_e.ASP (last accessed on October 19th, 2021).

¹³ Foreign affairs and international trade Canada. *Joint Statement by Canada and the European Union - Ottawa* [online]. 2002. Available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/chronology-chronologie.aspx?lang=eng>. (last accessed on October 19th, 2021).

¹⁴ European Commission. 2008. *Press corner* [online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_08_1540 (last accessed on October 19th, 2021).

out a thorough scoping of this to ensure that any future agreement addresses the interests of both sides in a balanced way.”¹⁵

While Commissioner Ferrero-Waldner mentioned that: *“EU-Canada co-operation on regional issues around the world is better than ever. Not only is Canada a regular participant in the EU’s ESDP missions, but we also enjoy a healthy co-operative relationship in the field of election observation. Canada was a valued participant, for instance, in this year’s EU Election Observation Mission to Pakistan. With regard to Afghanistan, we also work very well together in crucial areas such as security sector reform and border management.”¹⁶*

The following twelve months were characterised by an intensive collaborative work, in order to complete the joint study regarding the assessment of a potential deeper economic partnership. In parallel, negotiators made substantial progress on an ambitious EU-Canada air transport agreement, designed to produce significant economic growth and create new jobs by creating new investment opportunities in the sector and reinforcing regulatory co-operation.¹⁷ In October 2008 Canada and the EU issued a joint study titled “Assessing the Costs and Benefits of a Closer EU-Canada Economic Partnership”, which provides supporting justification for the launch of negotiations.¹⁸

The study was reviewed at the October 2008 EU-Canada Summit. It demonstrated that both partners would gain from a further strengthening of the bilateral economic relationship and the liberalisation of their bilateral trade (European Parliament resolution of 8 June 2011 on EU-Canada trade relations, 2011)¹⁹ The estimation was that the gains for the EU would amount to some EUR 11.6 billion annually, around half of them from services liberalisation. The removal of tariffs (25%) and the reduction of non-tariff barriers (25%) would lead to further gains for the EU on the one side, as Canada’s gains would amount to some EUR 8.2 billion annually on the other.²⁰

On March 2009 the joint report was finalized, defining the scope of potential negotiations.²¹ In March 2009 the Joint Report on the EU-Canada Scoping Exercise was released. The findings in the joint report cover trade in goods, sanitary and phytosanitary issues, technical barriers to trade, trade facilitation, customs procedures, cross-border trade in services, investment, government procurement, regulatory

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ View the timeline. Retrieved from https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/view_timeline-consultez_chronologie.aspx?lang=eng (last accessed on October 19th, 2021).

¹⁹ European Parliament resolution of 8 June 2011 on EU-Canada trade relations [online]. Para. E. Available at: https://www.europarl.europa.eu/doceo/document/TA-7-2011-0257_EN.html (last accessed on October 19th, 2021).

²⁰ European Commission. 2009. Press corner. IP/09/648 para. 3 [online] Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_09_648 (last accessed on October 19th, 2021).

²¹ Global Affairs Canada. n.d. *Chronology of events and key milestones* [online]. Available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/chronology-chronologie.aspx?lang=eng> (last accessed on October 19th, 2021).

cooperation, intellectual property, movement of persons, competition policy, and other related issues, institutional arrangements, and dispute resolution.²²

As the findings of the study confirm, the Scoping Group held the mutual understanding that in regards to trade, the greatest amount of benefit for either side would result from the equivalent amount of liberalisation. In addition, both sides could benefit from the inclusion of other areas in an agreement, where there was joint interest in doing so. Regarding the considerations that are of immense importance for the successful conclusion of an agreement, the Group acknowledged the “Statement of the Council of the Federation – Support for the Negotiation of a New and Comprehensive Economic Agreement with the European Union” issued by Canada’s Council of the Federation.²³

According to this statement, *“the involvement of provinces and territories is necessary for the successful conclusion of negotiations and subsequent implementation of an agreement. As such, Premiers are pleased the federal government has committed to a process that enables all provinces and territories to participate directly in the negotiations. Consequently, after a final agreement, provinces and territories will take the necessary measures to ensure the implementation of any commitments they, as individual provinces and territories, undertake through the negotiation process.”*²⁴

Financial wise, in accordance with the evidence of Eurostat, the Statistical Office of the European Communities between 2000 and 2008, EU27 exports of goods to Canada grew from 21.1 billion euro to 26.1 bn, while EU27 imports from Canada rose from 19.0 bn to 23.8 bn. As a result, the EU27 surplus in trade with Canada remained nearly stable, at 2.1 bn in 2000 and 2.3 bn in 2008. The share of Canada in the EU27’s total external trade in goods has fallen between 2000 and 2008. In 2008, Canada accounted for 2.0% of EU27 exports and 1.5% of EU27 imports, and was the EU27’s eleventh most important trading partner.²⁵

2.2 The decision to launch negotiations for the treaty

On 27 April 2009, EU Member States adopted a negotiating mandate to implement a new economic free trade agreement between the EU and Canada: The Comprehensive Economic and Trade Agreement (CETA).²⁶ On 27th of April 2009, the Commission received a mandate from the EU Member States (Council of EU) to engage on their

²² PATTERSON, B., 2009. *Canada, EU 'scoping' report released* [online]. The Council of Canadians. Available at: <https://canadians.org/analysis/canada-eu-scoping-report-released> (last accessed on October 19th, 2021).

²³ *Joint Report on the EU-Canada Scoping Exercise* [online]. 2009. p. 8. Chapter 4. Available at: <http://www.esf.be/new/wp-content/uploads/2009/03/canada-eujointreport2009-03-05.pdf> (last accessed on October 19th, 2021).

²⁴ *Statement of the Council of the Federation* -- Support for the negotiation of a new and comprehensive economic agreement with the European Union*. 2009. Retrieved from <https://canadaspremiers.ca/wp-content/uploads/2017/09/statement-eu-20feb09.pdf> (last accessed on October 19th, 2021).

²⁵ ALLEN Tim. *EU-Canada Summit: An EU27 external trade surplus of 2.3 bn euro with Canada in 2008* [online]. 2009. Available at: <https://ec.europa.eu/eurostat/documents/2995521/5071222/6-04052009-AP-EN.PDF.pdf/a81d0c8d-8719-490a-afe4-652f5bc8f9b3> (last accessed on October 19th, 2021).

²⁶ Sice.oas.org. *SICE: Trade Policy Developments: Canada-European Union* [online]. n.d. Available at: http://www.sice.oas.org/TPD/CAN_EU/CAN_EU_e.ASP (last accessed on October 19th, 2021).

behalf for a new economic and free trade agreement with Canada. This agreement would go beyond the contemporary WTO commitments and reinforce the already strong bilateral trade and investment relationship. It was also noted that in 2008, trade in goods and services between EU and Canada exceeded EUR 70 billion and the total stock of investment stood at over EUR 260 billion.²⁷

On 5 May 2009, in Brussels, the Commission released a statement that the EU and Canada were to launch negotiations for a new economic and free trade agreement at that year's EU-Canada summit, which took place in Prague on 6 May. *“The EU will be represented by European Commission President José Manuel Barroso and the Czech Prime Minister Mirek Topolánek in his role as EU President in Office. Prime Minister Stephen Harper represented Canada. The Summit agenda will cover a range of issues starting from a follow-up to the recent G-20 meeting in London to an array of bilateral topics, such as the marking of the EU-Canada Air Transport Agreement and the EU-Canada Air Safety Agreement. The centrepiece of this year's summit is the EU-Canada economic partnership as it will see the launch of negotiations towards a new economic and free trade agreement. This agreement will go beyond current WTO commitments and will reinforce the already strong bilateral trade and investment relationship. Furthermore, leaders expressed their commitment to building a low-carbon global economy while strengthening capacity to adapt to the impacts of climate change. Other issues to be touched upon will include Afghanistan, where the EU and Canada are co-operating closely together to promote good governance and the rule of law.”*²⁸

President José Manuel Barroso stated prior to the meeting: *“This Summit will launch key initiatives which will boost our partnership and will bring clear benefits to our citizens. The negotiations towards a new economic and free trade agreement will lift EU-Canada relations to an altogether new level. And the air services- and air safety agreements are the most ambitious we have ever concluded. This is the kind of signals we need to send out at this crucial time, signals that we want to keep open markets to generate prosperity.”*²⁹

Commissioner for External Relations and European Neighbourhood Policy Benita Ferrero-Waldner pointed out that: *“Canada is a longstanding strategic ally for us in the global arena. I very much appreciate Canadian support and cooperation in many parts of the world and I also value Canada's participation and cooperation especially in the field of election observation. I particularly welcome Canada's engagement in Afghanistan and I hope for further Canadian secondments in the context of the ongoing increase of the size of the EUPOL Mission.”*³⁰

Catherine Ashton, Commissioner for Trade, welcomed the expected launch of negotiations: *“At a time when concerns about protectionism dominate the trade agenda, the decision to start negotiations now sends a powerful message that open trade and investment are drivers of economic recovery. This agreement will*

²⁷ European Commission. *Press corner* [online]. 2009. IP/09/648 para. 1. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_09_648 (last accessed on October 19th, 2021).

²⁸ European Commission. *Press corner* [online]. 2009. IP/09/701. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_09_701 (last accessed on October 19th, 2021).

²⁹ *Ibid.*

³⁰ *Ibid.*

*strengthen a deep and stable relationship that is already worth some EUR 70 billion annually in trade of goods and services alone, delivering new jobs for workers, lower prices for consumers and reduced regulatory costs for business.”*³¹

Two days prior to the European Union-Canada summit in Prague, Eurostat issued data on trade and investments between the EU and Canada. In this release of information, Germany had the largest surplus, while the United Kingdom had the largest deficit among the EU27 Member States. In 2008, Germany (6.2 bn euro or 24% of the total) was the largest exporter to Canada, followed by the United Kingdom (4.6 bn or 18%), France (2.8 bn or 11%) and Italy (2.6 bn or 10%). The United Kingdom (7.4 bn or 31%) was by far the largest importer, followed by Germany (2.8 bn or 12%), the Netherlands (2.6 bn or 11%) and France (2.3 bn or 10%). The largest surpluses were observed in Germany (+3.4 bn), Italy and Sweden (both +0.8 bn), while the largest deficits were registered in the United Kingdom (-2.8 bn) and the Netherlands (-0.9 bn). Nearly two-fifths of EU27 exports to Canada were machinery and vehicles, while chemicals and other manufactured articles each accounted for around a fifth of exports. Machinery and vehicles made up around a quarter of imports, and crude materials and other manufactured articles each accounted for around a fifth of imports. In detail, the main exports of EU Member States to Canada were medicine, motor cars, aircraft engines, crude and refined oil. On the other side, the main imports were aircraft, refined oil, diamonds, coal, nickel and iron ore.³²

On 2 November 2009, Canada sought a discussion with the European Commission on the topic of the Regulation of seal products, (EC) No. 1007/2009 of the European Parliament and the Council, which prohibited the commerce of seal derived merchandise within the Union.(WTO cases, 2016)³³ Canada also filed “dispute settlement proceedings” against the EU at the World Trade Organization, claiming that it created technical barriers in trade, violating Articles 2.1 and 2.2 of the TBT Agreement.³⁴ Nevertheless, both sides decided to overlook the controversy and continue the negotiations for CETA.

The summit on 6 May 2009 signified the beginning of the deepening in the EU and Canada already well-functioning economic relationship, which was still oriented by the 1976 Framework Agreement for Commercial and Economic Cooperation, alongside several subsequently negotiated sectoral agreements, including the then recently negotiated Air Transport Agreement.³⁵

On 6th of May 2009, the Canadian Government released an EU-Canada Summit statement, which announced that leaders from both sides, determined to end the

³¹ Ibid.

³² ALLEN Tim. *EU-Canada Summit An EU27 external trade surplus of 2.3 bn euro with Canada in 2008* [online]. 2009. Available at: <https://ec.europa.eu/eurostat/documents/2995521/5071222/6-04052009-AP-EN.PDF.pdf/a81d0c8d-8719-490a-afe4-652f5bc8f9b3> (last accessed on October 19th, 2021).

³³ European Commission – WTO cases- Cases involving the EU. Para.1-2 [online]. Available at: <https://trade.ec.europa.eu/wtodispute/show.cfm?id=475&code=2> (last accessed on October 19th, 2021).

³⁴ European Communities – Measures Prohibiting the Importation and Marketing of Seal Products. P. 17-20 [online]. Available at: https://www.wto.org/english/tratop_e/dispu_e/400_401abr_e.pdf (last accessed on October 19th, 2021).

³⁵ European Commission. *Press corner* [online]. 2009. IP/09/648, para. 4. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_09_648 (last accessed on October 19th, 2021).

economic and financial crisis, recognized the importance of repairing the international financial system and restoring flows of credit and capital. *“We have devised bold stimulus packages to boost demand, which we will implement in a coordinated, expedited and effective manner; we have agreed to strengthen financial market regulation through sound domestic regulation complemented by international monitoring, principles and oversight; and we will strengthen trade and investment flows and refrain from protectionism. In this respect, we will fulfil our national and collective commitments, as agreed to at the G20 Washington and London Summits, to help build a more stable global financial system and to speed global economic recovery.”*³⁶

In addition, it was announced that negotiations on a comprehensive air transport agreement between the EU and Canada, which had opened in 2008, has now reached a point where something should be done about it, while an air safety agreement, that would stimulate aeronautical industrial activity, was about to be signed on 6 May 2009.³⁷

³⁶ *Canada-EU Summit Declaration* [online]. 2009. P.1 para.5. Available at: http://www.sice.oas.org/TPD/CAN_EU/Negotiations/Dec2009_Prague_e.pdf (last accessed on October 19th, 2021).

³⁷ *Canada-EU Summit Declaration* [online]. 2009. P.1 para.5. Available at: http://www.sice.oas.org/TPD/CAN_EU/Negotiations/Dec2009_Prague_e.pdf (last accessed on October 19th, 2021).

On 10th of June 2009, in Montreal, the European Union Trade Commissioner Catherine Ashton and Stockwell Day, the Canadian Minister of International Trade and Minister for the Asia-Pacific Gateway, entered into negotiations for a Comprehensive Economic and Trade Agreement (CETA) that could provide up to EUR 20 bn per year in additional benefits to the two economies. Commissioner Ashton and Minister Day had a meeting at a plenary session at the Conference de Montreal, where they both spoke on the economic crisis and international trade. Both sides came to the mutual agreement that October 2009 was the right time for the first full round of formal negotiations, at a senior level, for the CETA.³⁸

Commissioner Ashton stated: *“The EU and Canada are trading partners with close historical ties, and our ambitions for this agreement must reflect the depth of our relationship. We come to the table prepared to discuss all subjects of interest to either of us. There will be difficult issues, but we are convinced that the ultimate prize justifies the effort as we seek to trade our way out of the economic downturn.”*³⁹

Minister Day’s statement was: *“This first meeting represents a solid step toward a historic economic agreement between Canada and Europe. These negotiations are a priority for our government. Canadian officials have met their EU counterparts a number of times and are in regular contact with them. The importance of trade is front and centre as we go through this global economic downturn. That is why our governments are working together to reduce trade barriers and open doors for business.”*⁴⁰

According to the European Commission, the CETA comprehensive agreement would be beneficiary for both sides as it expands at a variety of areas, such as trade in goods and services, investment, public procurement, the protection and enforcement of intellectual property rights, and commitments on the social and environmental aspects of trade and sustainable development. The Commission declared that member states of the EU were fully committed to concluding an ambitious bilateral agreement with Canada, and the EU welcomed the commitment given by Canada’s provinces to the negotiating process.⁴¹

According to the Government of Canada at the time, a Canada-EU study of that time demonstrated that free trade between Canada and the EU may bring a \$12-billion boost to the Canadian economy and increase Canadian exports to the EU by about 20 percent. Hence, a bilateral agreement with the EU could deliver commercial benefits across many sectors of the Canadian economy, including aerospace,

³⁸ European Commission, 2009. *EU and Canada start negotiations for economic and trade agreement*. IP/09/896. Para. 1 [online] (last accessed on October 19th 2021) Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_09_896 .

³⁹ European Commission, 2009. *EU and Canada start negotiations for economic and trade agreement*. IP/09/896, para. 2. [online] (last accessed on October 19th 2021) Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_09_896 .

⁴⁰ European Commission, 2009. *EU and Canada start negotiations for economic and trade agreement*. IP/09/896, para. 3. [online] (last accessed on October 19th 2021) Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_09_896 .

⁴¹ European Commission, 2009. *EU and Canada start negotiations for economic and trade agreement*. IP/09/896, para. 4. [online] (last accessed on October 19th 2021) Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_09_896 .

chemicals, wood products, automotive vehicles and parts, agricultural products, transportation and other business services. In 2008, two-way trade in goods and services between Canada and the EU amounted to \$114.6 billion, 6.2 percent more than the year 2007. The EU is Canada's second-largest export market, after the United States. Canadian goods and service exports to the EU were at least 3.9 percent more in 2008, reaching \$52.2 billion.⁴²

As for the trade prior to the implementation of CETA, according to the Commission, goods and services trade between EU and Canada in 2009 was worth around EUR 70 billion annually. Canada's exports to the EU involved chemicals, transport equipment, metals, minerals, machinery, paper products and processed foods. Key EU exports to Canada included machinery and equipment, chemicals, motor vehicles and parts, transport equipment, petroleum, beverages and processed foods. Transportation, travel and business services were the main services traded between EU and Canada.⁴³

October 2009 marked the first round of a series of negotiations toward an agreement, that were expected to last two years, yet they were extended until 2014. The talks took place in Ottawa, where the two parties worked hard to obtain mutual understanding and established a rigorous negotiating schedule.⁴⁴

2010

On 18 January 2010, Canada and the European Union attended a meeting in Brussels in order to initiate the second round of negotiations.⁴⁵ On 22nd of January 2010, the Director for Trade in Services and Investment and Bilateral Trade Relations released an invitation to offer a service contract in order to provide a Trade Sustainability Impact Assessment (Trade SIA) relating to the negotiation of a Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada.⁴⁶

Sustainability Impact Assessments are part of the European Union's trade Negotiations. The goal of a preliminary assessment on the sustainability impact, a treat that each trade treaty could carry, is to foresee the social, environmental and economic changes it could bring. Based on said data both ends can navigate towards improved and mutually beneficial regulatory trade alternatives.⁴⁷ The SIA is a DG

⁴² GAC. 2009. *June 10, 2009 (11:20 a.m. EDT) No. 154 First Meeting Held on Comprehensive Economic and Trade Agreement Between Canada and European Union*. [online] Available at: https://www.international.gc.ca/media_commerce/comm/news-communiqués/2009/387248.aspx?lang=eng (last accessed on October 19th 2021)

⁴³ European Commission, 2009. *EU and Canada start negotiations for economic and trade agreement*. IP/09/896. Para.5. [online] (last accessed on October 19th 2021) Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_09_896 .

⁴⁴ Global Affairs Canada. n.d. *Chronology of events and key milestones*. [online] Available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/chronology-chronologie.aspx?lang=eng> (last accessed on October 19th 2021)

⁴⁵ Sice.oas.org. n.d. *SICE: Trade Policy Developments: Canada-European Union*. [online] Available at: http://www.sice.oas.org/TPD/CAN_EU/CAN_EU_e.ASP (last accessed on October 19th 2021)

⁴⁶ Invitation to tender for a service contract to provide a Trade Sustainability Impact Assessment (Trade SIA) relating to the negotiation of a Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada. (2010). (last accessed on October 19th 2021) Retrieved from https://trade.ec.europa.eu/doclib/docs/2010/august/tradoc_146399.pdf

⁴⁷ BÜRGI BONANOMI, E. *EU Trade Agreements and their Human Rights Impacts*. Page 1, Abstract. Retrieved from https://www.oefse.at/fileadmin/content/Downloads/tradeconference/Bürge_EU_trade_agreements_impacts_on_human_rights_methodology.pdf (last accessed on October 19th 2021)

Trade-specific tool, which provides the Commission with an analytical evaluation of the implications of the agreement, during the negotiations. The SIA provides updated information to facilitate and promote the dialogue, by evaluating the changes that are anticipated to be carried forth by a trade deal, identifying potential compromises and guarantees that policy choices are improved. Still, one of the most important roles of the SIA is that it provides the stakeholders from both participating sides with the ability to involve in the negotiations, by sharing their opinions with the negotiators, which contributes to the maintenance of the transparency in the process.⁴⁸

On 3rd of March 2010, the Commission suggested a different economic strategy in Europe, the so called “Europe 2020”, aiming at forwarding the EU out of the economic crisis of 2008, while outlining the evolvement of the EU economy for the decade to come. (Europe 2020: Commission proposes new economic strategy in Europe., 2010)⁴⁹ Later in 2010 the negotiations became more frequent. The third and fourth round of negotiations took place in Ottawa within 19-23 April 2010 and in Brussels during 12-16 July 2010, respectively.⁵⁰

As the negotiations continued, the dispute of the participating sides over the seal products importation to EU resurfaced. On the 18th of October 2010, Canada requested additional consultations with the European Union considering the European Commission’s publication of Commission Regulation (EU) No. 737/2010 on the 17th of August 2010. The regulation lays out detailed rules for the implementation of Regulation (EC) No. 1007/2009 of the European Parliament and of the Council on trade in seal products (“implementing measure”). According to Canada, the “implementing measure”, either or in combination with Regulation EC No. 1007/2009, is inconsistent with Articles 2.1, 2.2, 5.1, 5.2, 5.4, 5.6, 6.1, 6.2, 7.1, 7.2, 7.4, 7.5, 8.1 and 8.2 of the TBT Agreement, Articles I:1, III:4 and XI:1 of the GATT 1994 and Article 4.2 of the Agriculture Agreement. Furthermore, Canada noted that it might decide to discuss further on issues relating to Regulation EC No. 1007/2009 that were previously addressed at the 15th of December 2009 consultations.⁵¹ Two months later, on December of 2010, the ministers of trade held a meeting to monitor the progress of the negotiations, and notified their representatives to sustain the zeal and rate of the discussions.⁵²

2011

⁴⁸ Sustainability Impact Assessments - Trade - European Commission. Retrieved from <https://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/sustainability-impact-assessments/>(last accessed on October 19th 2021)

⁴⁹ Europe 2020: Commission proposes new economic strategy in Europe. IP/10/225 para. 2 [online] Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_10_225(last accessed on October 19th 2021)

⁵⁰ Canada – European Union. Back round and Negotiations [online] Paragraph 2. Available at: http://www.sice.oas.org/TPD/CAN_EU/CAN_EU_e.ASP(last accessed on October 19th 2021)

⁵¹ WTO. DS400. Consultations para 4. [online] (last accessed on October 19th 2021) Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds400_e.htm

⁵² View the timeline.(last accessed on October 19th 2021). Retrieved from https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/view_timeline-consultez_chronologie.aspx?lang=eng

Brussels hosted the sixth round, from 17 to 21 January 2011, while the seventh and eighth round took place in April 2011 and July 2011 respectively.⁵³

In the meantime, Canada requested the formation of a panel regarding the seal product settlement, on February 11, 2011. The Dispute Settlement Body postponed the formation of a panel during its meeting on February 24, 2011.⁵⁴ At the assembly of 25th of March 2011, the DSB entrenched a panel. The countries which served their rights as third parties were: China, Colombia, Iceland, Japan, Mexico, Norway and the United States. Subsequently, Argentina, Ecuador and the Russian Federation reserved their third party rights. A second panel was established for dispute DS401, on April 21st 2011, however, under Article 9.1 of the DSU, as well as with respect to various complainants, the two panels (DS400 and DS401) were merged.⁵⁵

The European Parliament Despite applauding progress in negotiations for a Comprehensive Economic and Trade Agreement (CETA) between EU and Canada, MEPs raised concerns about seal products, tar sands, intellectual property rights, and public procurement in a resolution passed by a strong majority. The CETA would be the most comprehensive trade deal negotiated by both sides, including chapters not only regarding commerce but also regards to investment and intellectual property rights. Most political groupings in the European Parliament applauded progress in negotiating the deal with such a key economic partner for the EU.⁵⁶

Nonetheless, the House of Commons noted several possible issues. One was the environmental impact of extracting oil from tar sands, which resulted to significant CO2 emissions and to a local impact on biodiversity. Another issue was the significant injury to the health of asbestos miners, whose processing and usage was already prohibited in the EU. Third, MEPs hoped that the disagreement over the EU's restriction on imports of seal products could be resolved peacefully, and that Canada's proposal for a WTO dispute settlement panel on the EU prohibition would not obstruct the CETA discussions. They explicitly urged the Commission to maintain its stance on the EU prohibition, and expressed their great hope that Canada will abandon its WTO challenge before the European Parliament votes on ratifying the CETA.⁵⁷

On June 2011, the European Parliament released a resolution in which it welcomed the significant progress made in the negotiations on CETA, and called for a comprehensive SIA for the aftermath of the final text.⁵⁸ Four month later, the meeting on October 2011 signified the completion of the first nine rounds of negotiations, and the transition of the consultations towards an accelerated, in-depth period, as the

⁵³ Canada – European Union. Back round and Negotiations [online] Paragraph 2. Available at: http://www.sice.oas.org/TPD/CAN_EU/CAN_EU_e.ASP (last accessed on October 19th 2021)

⁵⁴ WTO. DS400. Para 7. [online] (last accessed on October 19th 2021) Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds400_e.htm

⁵⁵ WTO. DS400. Panel and Appellate Body proceedings Para. 1 [online] (last accessed on October 19th 2021). Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds400_e.htm

⁵⁶ MEPs favour EU-Canada trade deal, but worry about seals, tar sand oil and asbestos. Para 1,2 [online] Available at: <https://www.europarl.europa.eu/news/el/press-room/20110608IPR20931/meps-favour-eu-canada-trade-deal-but-worry-about-seals-oil-and-asbestos> (last accessed on October 19th 2021)

⁵⁷ Op. cit 60. Para 3

⁵⁸ European Parliament resolution of 8 June 2011 on EU-Canada trade relations. no. 9. [online] Available at: https://www.europarl.europa.eu/doceo/document/TA-7-2011-0257_EN.html

participants acknowledged that there has been an eloquent development covering all aspects of interest.⁵⁹

However, on 4th of October 2011, the European Commission college voted on a review of the Fuel Quality Directive, leading to Canada's protest. The reason was that the review, based on a Stanford University research for the EU, "assigns a default value 107 grams CO₂ equivalent per megajoule (CO₂eq/MJ) for oil produced from tar sands" as "oil extraction from tar sands was more carbon intensive". The fact that this number exceeds the average number, set for other crude oils, caused Canada's displeasure, as Canada possesses the world's third-largest known petroleum reserves, the majority of which is extracted from Alberta's tar sands.⁶⁰

2012

Except for the differences about tar sand, the negotiations on trade continued. In February 2012, federal, provincial and territorial ministers responsible for international trade met in Ottawa, with the purpose of setting CETA at the top of their agenda and to focus on the trade with the EU.⁶¹ In their joint statement they declared CETA the "most important trade priority" for Canada, as the EU is the broadest interspersed economy, with 500 million consumers and a GDP of over \$17 trillion. Also, the statement referred to the fact that they estimate that the implementation of the agreement will bring a 20 percent boost in bilateral trade and a \$12 billion annual increase to Canada's economy.⁶²

Meanwhile, claims were made on the same month that the Canadian side was threatening the EU with trade retaliation over the tar sand issue, as a series of censored documents were released after an environmental organization called "Transport and Environment" requested access to EU documents. According to the then EU Ombudsman P. Nikiforos Diamandouros, who revealed the papers after a heavy censorship, the full disclosure of the documents "would seriously affect the current trade negotiations and Canada's relations with the EU". He also stated that the removed paragraph (including other documents) "reveal the tensions that the commission's proposals regarding oil sands have generated among the Canadian authorities and make reference to the measures those authorities are envisaging to adopt, in case their interests are negatively affected by the outcome of the oil sands issue".⁶³

A few months later, on 11th July 2012, MEP Mark Tarabella (S&D) filed a question for written answer from the Commission, in regards to the existence of paragraphs of

⁵⁹ View the timeline. Retrieved from https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/view_timeline_consultez_chronologie.aspx?lang=eng (last accessed on October 19th 2021)

⁶⁰ EURACTIV.com with Reuters. 2013 para. 2 and Background [online] Retrieved from: <https://www.euractiv.com/section/energy/news/canada-attacks-eu-data-labelling-tar-sands-as-dirty/>

⁶¹ View the timeline. Retrieved from https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/view_timeline_consultez_chronologie.aspx?lang=eng (last accessed on October 19th 2021)

⁶² Communiqué—Federal, Provincial and Territorial Governments Focus on Trade Agreement with Europe. Para. 4,6 [online] Available at: https://www.international.gc.ca/media_commerce/comm/news-communiqués/2012/02/28b.aspx?lang=eng (last accessed on October 19th 2021)

⁶³ Neslen. Canada threatens EU over tar sands. Para 1-3,8. [online] Available at: <https://www.euractiv.com/section/climate-environment/news/canada-threatens-eu-over-tar-sands/>(last accessed on October 19th 2021)

the Anti-Counterfeiting Trade Agreement within the CETA agreement body, although ACTA had been rejected by the Parliament on the same month.⁶⁴ The Anti-Counterfeiting Trade agreement (ACTA) is a reformative agreement, which aims at the creation of new legislation surrounding intellectual property, through obscure provincial negotiations, outside democratic fora as the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO).⁶⁵ In his question, Tarabella expressed his concern on why a bilateral trade deal with a third country included paragraphs that altered the European internal laws, as well as the fact that the Parliament's decision was overlooked.⁶⁶ More than a month later, the Commission replied that CETA will include a chapter on intellectual property (IPR), in an effort to protect the intellectual assets of both sides; however, the draft available to the MEPs dated before the Parliament's condemnation of ACTA, hence these paragraphs were replaced during the still ongoing negotiations.⁶⁷

Activists, who opposed ACTA, leaked the abovementioned draft, dated in February 2012, to the media; they accused the EU for lack of transparency in the negotiations as a tool to implement in secrecy the provisions of ACTA that have been dismissed.⁶⁸ This caused an uproar in civil society, with citizens demonstrating against the removal of the paragraphs, while activists pointed out that the decision of both sides to keep the drafts of the discussions away from the public eye deprived their citizens of the possibility to be involved in the agreement.⁶⁹ This reaction led the Dutch Government to decide to not ratify CETA, in the case that it includes provisions of ACTA.⁷⁰

As for the seal product dispute settlement, which was occurring in the background, the Canadian side alongside Norway invited the Director-General to determine the configuration of the panel on September 24th 2012. The board was created on October 4th.⁷¹

Contrary to the reactions by activists, the seal product dispute and the tar sand issue, the negotiations continued steadily. On November 2012, the Canadian and EU trade and agriculture ministers meet in Brussels, Belgium, to assess the developments and

⁶⁴ TABARELLA Marc. Parliamentary questions. [online] Available at: https://www.europarl.europa.eu/doceo/document/P-7-2012-006906_EN.html?redirect (last accessed on October 19th 2021)

⁶⁵ EFF. Anti-Counterfeiting Trade Agreement. Para. 1 [online] Available at: <https://www.eff.org/issues/acta> (last accessed on October 19th 2021)

⁶⁶ Op. cit. 59

⁶⁷ European Parliament. Parliamentary questions. De Gucht. [online] Available at: https://www.europarl.europa.eu/doceo/document/P-7-2012-006906-ASW_EN.html (last accessed on October 19th 2021)

⁶⁸ Open Initiative. Leaked CETA Draft Provokes ACTA Comparisons, Transparency Worries. Para.1-2 [online] Available at: <https://opennet.net/blog/2012/07/leaked-ceta-draft-provokes-acta-comparisons-transparency-worries> (last accessed on October 19th 2021)

⁶⁹ EFF. Canada-EU Trade Agreement Replicates ACTA's Notorious Copyright Provisions. Para. 2,7,10. [online] Available at: <https://www.eff.org/deeplinks/2012/10/ceta-replicates-acta> (last accessed on October 19th 2021)

⁷⁰ Michael Geist. Available at: <https://www.michaelgeist.ca/2012/09/dutch-govt-on-ceta-and-acta/> (last accessed on October 19th 2021)

⁷¹ WTO. DS400. Panel and Appellate Body proceedings Para. 1 [online] Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds400_e.htm (last accessed on October 19th 2021)

address main differences.⁷² The Council of the European Union published a press release, which stated that the Commission verified the entrance to the conclusion of the discussions, where a debate for unresolved issues would be conducted, in order to achieve an agreement. In addition, it announced that new negotiations in regards to the criminal enforcement of intellectual property rights (which was part of the ACTA paragraphs), have reached an agreement.⁷³

2013

More than half a year later, in February 2013 the Canadian and European ministers of trade and agriculture met in Ottawa in order to amplify remaining differences on the wishes of either side.⁷⁴ At this point, according to Matthias Brinkmann, the ambassador of the EU in Canada, most of the issues that appeared during the four-year negotiations had been resolved, with the exclusion of the agricultural domain, specifically the access of beef products from Canada to the markets of the EU member states and the access of the EU's dairy products to Canada, as both sectors are protected in the receiving countries.⁷⁵ On the contrary, after hearing Ambassador Brinkmann's comments, the Canadian Trade Minister, Ed Fast, stated that negotiations have made "significant progress" closer to an agreement, however agriculture is not among the "very small handful of issues" that were to be discussed.⁷⁶

Bystanders of the last negotiations presumed at the time that the Canadian side needed to accelerate the treaty signing, before the EU initiated negotiations with other states such as the USA and Japan.⁷⁷ In the meantime, official sources close to the negotiations admitted to the press that the level of openness of the agricultural markets to imports was still an issue since the EU continued to oppose raising import limits for Canadian cattle and pork, while Ottawa opposed additional imports of EU dairy goods, eggs, and poultry. Moreover, the increased access to the Canadian dairy market was critical for the EU, which at least anticipated prices to fall and European producers to become more competitive after the end of the milk quota system in 2015. The EU ranks first in line, in the productivity of milk, worldwide. The two sides had planned to reach an agreement in Canada amid discussions between Canadian and EU trade ministers on topics ranging from pharmaceutical patents to energy, but sources claimed that was no longer viable.⁷⁸

In addition, while Canada is a smaller country than the United States, the issues at hand are similar, such as opening the EU beef market, or even the fact that a Canadian

⁷² View the timeline. Retrieved from https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/view_timeline_consultez_chronologie.aspx?lang=eng (last accessed on October 19th 2021)

⁷³ Council of the European Union. Press Release. Foreign Affairs Trade. Page 10. [online] Available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/133909.pdf (last accessed on October 19th 2021)

⁷⁴ Ibid 68

⁷⁵ The Canadian Press, Canada-EU trade talks hung up on beef market access issue, Para 2-4 [online] Available at: <https://www.cbc.ca/news/politics/canada-eu-trade-talks-hung-up-on-beef-market-access-issue-1.1345005> (last accessed on October 19th 2021)

⁷⁶ Ibid Para 10-11.

⁷⁷ Ibid Para 14-15

⁷⁸ EU-Canada trade deal delayed by agriculture spat. EURACTIV. Para 1,5,7,10,11. [online] Available at: <https://www.euractiv.com/section/global-europe/news/eu-canada-trade-deal-delayed-by-agriculture-spat/> (last accessed on October 19th 2021)

agreement would serve as a model for further negotiation with Washington. To accelerate the opening of negotiations with Washington, the EU eliminated certain hurdles to selling US beef in Europe in the same week.⁷⁹

In conjunction with the reported disagreements, a news report claimed that a hesitant broad trade agreement has been reached between Canada and the EU. However, while this agreement has been promoted as a free-trade agreement, the scant information published about its provisions implied that the specificities of any final agreement may focus on reducing import-export tariffs. The prime minister of Canada, Stephen Harper, had frequently highlighted the necessity of a trade agreement with Europe. Despite this, the discussions, which began in 2009 and were mostly held behind closed doors, received little attention in Canada. Dairy farmers, who normally benefit from stringent import limits, have been concerned. Once the final text of the agreement is finished and signed, it must be ratified by the European Parliament, all 27 member states of the European Union, and every province and territory of Canada. The then British prime minister, David Cameron, stated that the agreement would pump £1.3 billion, or approximately \$2.1 billion, into the British economy, raise exports to Canada by nearly a third, generate thousands of jobs, and provide a boost to the discussions between the EU and the United States.⁸⁰

As mentioned above, another of the factors that became a barrier for CETA has been the plan of EU authorities to label Canada's Tar Sand as "dirty". On the same week of the meeting, Joe Oliver, the then Canadian Minister of Natural Resources, gave a warning that they are prepared to retaliate with trade action against the 27 member states, in case the plan was enforced. Ambassador Brinkmann stated that the EU had no intention to prohibit "the import of Canadian oil derived from bitumen, or any oil derived from coal. It's up to the operators to get the mix right to get this level", referring to the new quality directive implementation rules, which would be "non-discriminatory and science based and would hopefully handle the pressure, hardships and tests at the WTO (World Trade Organization)".⁸¹

On 13th of November 2013, Canada reiterated its criticism of the EU's proposal to label Canadian tar sands oil as especially polluting and issued a report which somehow challenged the cases behind the contentious policy, namely the cases behind the use of disruptive techniques to make political points, or to change the respective government policies. Canada possesses the world's third-largest known petroleum reserves, the majority of which is extracted from Alberta's tar sands. Oil extraction needs more energy than regular production, as environmentalists are frequently pointing out. The EU is developing a Fuel Quality Directive (FQD) to reduce greenhouse gas emissions from the transportation sector. The regulation is specifically related to the tar sands, which Canada believed would establish a poor precedent and harm vital energy exports. Natural Resources Minister Joe Oliver presented a study commissioned by Canada's right-wing Conservative government on Wednesday, alleging that the EU rule was based on faulty data. "*As currently worded, the FQD implementation procedures are unscientific and discriminatory,*" said Oliver, who

⁷⁹ Ibid. Para 8,9.

⁸⁰ Canada and Europe Reach Tentative Trade Agreement. Para 1,2,6,16 [online] Available at: <https://www.nytimes.com/2013/10/19/business/international/canada-and-europe-reach-tentative-trade-agreement.html> (last accessed on October 19th 2021)

⁸¹ Op. cit. 73 Para 16-20. <https://www.cbc.ca/news/politics/canada-eu-trade-talks-hung-up-on-beef-market-access-issue-1.1345005> (last accessed on October 19th 2021)

planned to go to Europe to argue against the regulation. According to an ICF International Inc. analysis, the FQD overlooked the fact that the EU utilizes oil from Venezuela, Iraq, Nigeria, and Russia, all of which burned and released natural gas during production. As a result, oil products and resources from these countries are sometimes worse than tar sands petroleum, according to the respective report.⁸²

At this point, it would be of major importance to be mentioned that if the legislation was passed, it would have little direct influence on Canadian oil exports, which were for a period of time nearly entirely destined for the United States. The Conservative administration, on the other hand, was eager to diversify energy exports. The EU conducted an inconclusive vote on the directive in 2012 despite significant Canadian lobbying, and then chose to examine the entire implications of the proposal. This evaluation was required at the end of 2012 TransCanada also intended to build the Keystone XL pipeline, which would transport tar sands petroleum from Alberta to the United States. Green campaigners were urging US President Barack Obama to reject the project on the grounds that it would hasten climate change by increasing oil sands output.⁸³

2.3 End of the negotiations

While the European Union held its position regarding the Fuel Quality Directive and the Seal Product Settlement, in October 2013 both sides announced that they reached an agreement in principle, namely a stepping stone to the agreement that was considered fair and equitable⁸⁴

According to a press release by the European Commission, on October 18th, 2013, then Commission President José Manuel Barroso and then Canadian Prime Minister Stephen Harper managed to establish a political consensus on the essential components of the Comprehensive Economic and Trade Agreement (CETA), following months of rigorous talks between EU Trade Commissioner Karel De Gucht and Canadian Trade Minister Ed Fast. CETA was portrayed as the first free trade deal between the EU and a G8 member, while the improvement of the EU's economic relations with Canada would generate new prospects for development and job opportunities in the EU. The negotiators would now be able to continue the process and resolve any outstanding technical concerns as a result of this political breakthrough. Following that, the Council and Parliament should of course ratify the agreement.⁸⁵

President Barroso stated that, *“This is a highly ambitious and far-reaching trade agreement of great importance for the EU’s economy. Canada is one of the most advanced economies in the world. This agreement will provide significant new opportunities for companies in the EU and in Canada by increasing market access for goods and services and providing new opportunities for European investors. It will be*

⁸² EURACTIV.com with Reuters. Para 1-6 [online] (last accessed on October 19th 2021) Available at: <https://www.euractiv.com/section/energy/news/canada-attacks-eu-data-labelling-tar-sands-as-dirty/>

⁸³ Ibid Para. 9-11, 14-15

⁸⁴ Available at: https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/view_timeline-consultez_chronologie.aspx?lang=eng (last accessed on October 19th 2021)

⁸⁵ EU and Canada conclude negotiations on trade deal. Europa.eu. Para 1. [online] Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_13_972 (last accessed on October 19th 2021)

the basis for gaining a strong foothold in the North American market and so provide a catalyst for growth and the creation of jobs in Europe.”⁸⁶

EU Trade Commissioner Karel De Gucht also stated: *“I am delighted that we have managed to conclude negotiations on the EU-Canada free trade agreement. Both sides have worked extremely hard in the last few months to achieve the political break-through needed to ensure the positive outcome that will be beneficial for both economies,”* adding that: *“It has been a real challenge to reach this agreement, and it’s a real first when it comes to a comprehensive Free Trade Agreement between two mature economies.”⁸⁷*

Canadian Prime Minister Stephen Harper stated that Canada and the EU have achieved an agreement in principle on a comprehensive trade agreement that would considerably strengthen the two sides’ trade and investment relations while also creating employment and opportunity for Canadians. This is Canada’s largest and most ambitious trade deal to date. It included the majority of the bilateral economic connections between Canada and the EU, including commerce in products and services, investment, and government procurement. It also allows for the inclusion of areas of mutual interest other than those typically covered in Canada’s trade agreements, such as regulatory cooperation. The Comprehensive Economic and Trade Agreement discussions with the European Union were basically the most transparent and collaborative trade negotiations Canada has ever done. Provinces and territories have been active partners from the very first moment of the negotiations, and municipalities and stakeholders from around the nation and different sectors or fields of action have been contacted on a regular basis. After reaching an agreement in principle, both parties would work to finalize the formal agreement and conduct a legal review of the document. Once the final agreement was signed, it should be ratified by the respective legislators.⁸⁸

When the two parties’ negotiators were close to the finalization of the linguistic and theoretical part of the agreement, namely the actual written document, the Commission would inform the Parliament and the Council. The Commission would also deliver the final texts informally to the EU member states via the Council and the Parliament. The documents as they stand at the end of the negotiations would be published online by the Commission at <https://ec.europa.eu/trade/>⁸⁹

2014

Three months later the Seal Product Dispute saga continued. Canada notified the DSB on January 24th of 2014 of its decision to appeal to the Appellate Body certain issues of law and legal interpretations reached by the panel. The EU notified the DSB on January 29th of 2014, of its decision to appeal to the Appellate Body certain questions of law and legal interpretations produced by the panel. Due to the magnitude of the appeals, as well as the quantity and complexity of issues addressed, the Chair of the

⁸⁶ Ibid Para 3

⁸⁷ Ibid Para 4

⁸⁸ Canada Reaches Historic Trade Agreement With the European Union. Para 1,2,5,7. [online] Available at: <https://www.canada.ca/en/news/archive/2013/10/canada-reaches-historic-trade-agreement-european-union.html> (last accessed on October 19th 2021)

⁸⁹ Para. 10 [online] Available at: https://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf (last accessed on October 19th 2021)

Appellate Body notified the DSB on 24th of March, 2014, that the Appellate Body would be unable to distribute its findings within the timeframe specified in Article 17.5 of the DSU. Hence the circulation of the report was postponed to May 22nd, 2014.⁹⁰

On May 22nd, 2014, the Appellate Body announced its final decision. The Panel and Appellate Body dismissed Canada's and Norway's arguments against the prohibition itself. The Panel and Appellate Body agreed that the restriction serves a legitimate purpose (public moral concerns about seal care) and is not too restrictive of trade. However, the Appellate Body determined that there was a de facto breach of the most-favoured nation treatment duty (Article I GATT), as Greenland seal goods were treated more favourably than Canadian seal products due to the exemption for items obtained from Inuit hunts.⁹¹

It has been ruled that this disparity in treatment may be allowed in theory under GATT's public morals exemption (Article XX), but on the other side the EU had failed to draft the law in order to prevent arbitrary discrimination and should have taken greater efforts to persuade Canadian Inuit to utilize the exception. The Panel further determined that the discrimination caused by the exemption for hunting undertaken within the scope of maritime resource management is unjustifiable and consequently breaches Article 2.1 TBT Agreement as well as Article III:4 GATT (without being justified under Article XX GATT).⁹²⁹³

In contrast to the Panel's conclusions, the Appellate Body rejected the regime's classification as a technical rule, rendering all findings under the TBT Agreement moot and without legal force. The DSB approved the panel and Appellate Body findings on June 18th, 2014. The EU was given a reasonable time frame for implementation, which ended on October 18th, 2015.⁹⁴

On August 2014, Canada and the EU announced the finalization of the treaty documentation for the Canada-EU Trade Agreement, indicating the completion of the negotiations. Both sides proceeded with a detailed legal review and translation of the respective content into the other 22 EU treaty languages.⁹⁵

When the negotiations reached their final point and a draft was created, the Commission's attorneys, in collaboration with the Council's lawyer-linguists, examined thoroughly and, where required, revised the written document of the agreement (a process known as *legal scrubbing* in the linguist and translation industry). This guarantees that the agreement employs unambiguous words consistently throughout the text (consistency) and provides 'legal certainty,' which

⁹⁰ WTO. DS400. Panel and Appellate Body proceedings Para. 2 [online] Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds400_e.htm (last accessed on October 19th 2021)

⁹¹ European Commission. WTO cases. Para "Current situation". [online] Available at: <https://trade.ec.europa.eu/wtodispute/show.cfm?id=475&code=2> (last accessed on October 19th 2021)

⁹² Ibid.

⁹³ The Appellate Body. 400_401abr_e.pdf. Pages 191- 192 [online] Available at: https://www.wto.org/english/tratop_e/dispu_e/400_401abr_e.pdf (last accessed on October 19th 2021)

⁹⁴ Op. cit. 92

⁹⁵ View the timeline. Retrieved from https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/view_timeline-consultez_chronologie.aspx?lang=eng (last accessed on October 19th 2021)

means that: the agreement is thorough and explicit enough that both parties interpret it in the same manner, and when someone reads it, one can clearly understand what it means. To commemorate the completion of the discussions, the principal negotiators of both parties generally initial (sign) the text of the proposed agreement. Afterwards the Commission forwards the text of the agreement to the Council and the Parliament. Council lawyer-linguists edit the draft so that it is ‘ready for signing,’ before the Council submits back to the Commission the revised text. The text is usually negotiated in English; however, this is not always the case. It must be available in all the EU’s 23 official languages. The text is also translated by the Commission and its Directorate-General for Translation.⁹⁶

According to Canada’s Government, Canada’s provinces and territories had received the entire document and had been thoroughly informed on its content as well as the future stages, based on their engagement throughout the process. In addition, a September Canada-EU summit was planned to be held on Canada. On August 5th, Prime Minister Harper and Minister Fast announced that they would conduct a trade mission to the United Kingdom in early September 2014 to secure the employment and first-mover competitive advantages that the historic Canada-EU trade deal creates.⁹⁷

On September 2014, at the summit in Ottawa, the leaders from both sides published the final content of the agreement, which was available in Canada’s both official languages.⁹⁸ On behalf of the EU, the President of the European Council Herman Van Rompuy and the President of the European Commission Emmanuel Barroso attended the assemblage on 26 September, received by the Canadian Prime Minister Mr. Harper. It was a celebration for the closure of the negotiations procedure for both CETA and the Agreement on Strategic Partnership (SPA), which determines a variety of mutually important issues, including energy, security, innovation, sustainable development, and human rights advocacy. Leaders also expressed their vision for a stronger strategic relationship and discussed the EU and Canada’s shared objectives on important foreign policy issues.⁹⁹

In a Press conference, Herman Van Rompuy, then President of the European Council, stated: *“The Strategic Partnership Agreement and the Comprehensive Economic and Trade Agreement are embodiments of this much larger bond. The Strategic Partnership Agreement is a broad framework agreement. It will facilitate our consultations and cooperation on a multitude of issues, ranging from promoting international peace and security, to education and research, sustainable development and justice. It also acknowledges the principles our relationship is based upon, and which guide our action. The Comprehensive Economic and Free Trade Agreement will be the first trade agreement concluded by the European Union with one of the leading industrialised countries and one of the most ambitious agreements it has ever*

⁹⁶ Negotiating EU trade agreements. 2012. Page 4 Preparing Para 11-12 [online] Available at: https://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf (last accessed on October 19th 2021)

⁹⁷ Foreign Affairs, Trade and Development Canada. Para 3-5. [online] Available at: http://www.sice.oas.org/tpd/can_eu/Negotiations/EU_CAN_reached_complete_Text_e.pdf (last accessed on October 19th 2021)

⁹⁸ Op. cit. 91

⁹⁹ EU- Canada summit, Ottawa, 26 September 2014. Para 1-5. [online] Available at: <https://www.consilium.europa.eu/en/meetings/international-summit/2014/09/26/> (last accessed on October 19th 2021)

negotiated. It is about generating more trade and investment for both sides, about creating growth and jobs. These are key interests and concerns for both of us.”¹⁰⁰

In their mutual declaration, the Prime Minister of Canada, the President of the European Council and the President of the European Commission named the finalization of the text “a truly historic moment in the evolution of the Canada-EU relationship”. The Agreement fulfils the promise made in 2009 of a very broad liberalization of trade in products and services, major new possibilities in government procurement, provisions to promote and stimulate investment, and better and updated laws on other trade-related problems through developing a variety of cooperative structures to guarantee ongoing collaboration between the involved states. They emphasized the importance of the Canada-EU Trade Agreement as a way to create new prosperity on both sides of the Atlantic, generating more trade and two-way investment, and promoting jobs and growth. Efforts were promised to ensure that all businesses, workers, and consumers throughout Canada and the EU member states are equally positioned to capitalize on the opportunities provided by this historic agreement as soon as possible. Representatives also assured full support for its early ratification through different legal and political procedures of involved states.¹⁰¹

Following the commencement of the ratification procedure, after years of industry protest, the European Commission repealed a required obligation to classify tar sands oil as highly harmful in October 2014. In Strasbourg, 337 MEPs voted against the Fuel Quality Directive, more than the 325 in favour, but not enough for the needed majority of 376 required to reject it. The European Parliament on 17th of December, 2013 enacted contentious fuel quality regulations that do not penalize imports of toxic tar sands oil from Canada by just 12 votes.¹⁰²

In the past (July 2013), during a Congressional House Ways and Means Committee hearing, US Trade Representative Michael Froman stated that the FQD guideline on tar sands was “discriminatory, ecologically unjustifiable, and might constitute a barrier to US-EU trade.” Canada as well had “raised the matter in the framework of EU-Canada free trade negotiations.” In his turn, Joe Oliver, Canada’s natural resources minister, wrote to Günther Oettinger, the EU’s Energy Commissioner, to explain that the regulation was “discriminatory and potentially breaches the European Union’s international trade responsibilities.”¹⁰³

Since it was initially proposed on January 2014, the EU’s reason for scrapping greenhouse gas intensity objectives in its flagship Fuel Quality Directive (FQD), which controls emissions from transportation fuels, has been shrouded in secrecy. Despite repeated requests for action, officials from several EU ministries provide

¹⁰⁰ Press statement by the President of the European Council Herman Van Rompuy following the EU-Canada Summit in Ottawa. Para 3. [online] (last accessed on October 19th 2021) Available at: <https://www.consilium.europa.eu/media/23842/144938.pdf>

¹⁰¹ DECLARATION BY THE PRIME MINISTER OF CANADA AND THE PRESIDENTS OF THE EUROPEAN COUNCIL AND EUROPEAN COMMISSION. Para 2-3 [online] Available at: <https://www.consilium.europa.eu/media/23844/144939.pdf> (last accessed on October 19th 2021)

¹⁰² Crisp James. Canada tar sands will not be labelled ‘dirty’ after all. Para 3,1,2 [online] Available at: <https://www.euractiv.com/section/trade-society/news/canada-tar-sands-will-not-be-labelled-dirty-after-all/> (last accessed on October 19th 2021)

¹⁰³ Nelsen Arthur. The tar sands mystery and the smoking TTIP gun. Para Background 3-7. [online] Available at: <https://www.euractiv.com/section/transport/news/the-tar-sands-mystery-and-the-smoking-ttip-gun/> (last accessed on October 19th 2021)

contradictory justifications for the abandoning of a strategy aimed at reducing Europe's transport fuel emissions by 6% by 2020 at a cost of many billions of euros. According to the European Commission, transportation accounts for around a quarter of Europe's greenhouse gas emissions – the only sector in which CO₂ output is rising – and this figure might climb to 40% by 2020. However, the demise of the tar sands problem in Europe remained a mystery.¹⁰⁴

According to an EU source, this move was “really about burying a problematic file. Tar sands was the primary motivation but killing it this way conveniently gets rid of the biofuels problem as well.” According to environmentalists, biofuels may increase CO₂ emissions and global hunger. However, the oil industry lobby, Canada, and the United States are concerned that the directive would unjustly discriminate against tar sands. EU spokesmen would not comment on the matter on the record. However, one official told EurActiv that the directive was increased to reduce biofuel subsidies worth €6 billion per year, even though the associated carbon savings were “quite dubious”, adding that the issue with the present policy was that it was “essentially an agricultural subsidy by the backdoor”, which “cost an enormous amount of money for no benefit at all”.¹⁰⁵

In addition, several commissioners also voiced strong objection to a 2011 assessment on tar sands for the EU written by Stanford University's Adam Brandt, which concluded that lifecycle emissions from tar sands were on average 22% greater than the conventional petroleum ones owing to carbon-intensive production techniques. Some believe that this could be an indication as to why a full FQD implementing act has been on hold for more than three years. They expressed their opposition from EU member states with vested interests, such as the United Kingdom and the Netherlands.¹⁰⁶

Environmentalists have believed for months that the collapse of European tar sands action was connected to discussions on an EU-Canada free trade agreement known as CETA or an EU-US free trade agreement known as TTIP. The United States is the only country that refines and exports Canadian tar sands petroleum to Europe, blending it with domestic fuel in export barrels, leaving it subject to EU greenhouse gas intensity targets. Furthermore, a great amount of the United States' new oil output originates from unconventional sources, making it vulnerable to the FQD in and of itself.¹⁰⁷

2.4 The signing of the Agreement

2016

On February 29th, 2016, then EU Commissioner for Trade Cecilia Malmström and then Minister of International Trade of Canada Chrystia Freeland released a statement in order to announce the completion of the legal review of the English text of CETA. *“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;*

¹⁰⁴ Ibid. Para 1-4

¹⁰⁵ Ibid Para 5,6,10,11

¹⁰⁶ Ibid. Para 12-13

¹⁰⁷ Ibid Para 17,18,19

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. 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.” Commissioner Malmström also added that the European Commission and Canada would proceed to the translation of the agreement in the 22 EU treaty languages, in order to focus on the rapid ratification of this “gold standard agreement” which would benefit participating stakeholders, such as businesses and individuals. Last but not least, she expressed her confidence and optimistic point of view that CETA would be “signed in 2016 and enter into force the following year, in 2017”.¹⁰⁸

On the same tone, the Honorable Chrystia Freeland stated that their “top priority is the CETA agreement signing in 2016 and see it enter into force in 2017. CETA will bring tremendous benefits to both of our economies and stands to increase Canada-EU bilateral exports of goods and services by 23 percent, or \$38 billion, annually. This agreement would probably make the investment system more transparent, independent and impartial. CETA is one of the most ambitious and progressive trade agreements ever concluded by either Canada or the EU. This gold-standard agreement would benefit both economies and deepen the already strong trade and investment relationship we share.”(Joint statement by European Commissioner for Trade and Canada’s Minister of International Trade on Canada-EU trade agreement, 2016)¹⁰⁹.

On July 2016, the European Commission forwarded CETA to the Council of the EU with an official proposal for its approval and signature.¹¹⁰ On October 5th, 2016, the Council of the European Union reached a decision on the provisional application of the Comprehensive Economic and Trade Agreement (CETA). “Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), Article 91, Article 100(2), Article 153(2), Article 192(1) and the first subparagraph of Article 207(4), in conjunction with Article 218(5), thereof; Having regard to the proposal from the European Commission,” the Council decided on which cases the agreement would be applied, or not, provisionally and that it should respect the allocation of competences between the Union and the Member States.¹¹¹

On October 26th, 2016, the Council enacted a package of resolutions on the Comprehensive Economic and Trade Agreement (CETA) with Canada by written

¹⁰⁸ Joint statement: Canada-EU Comprehensive Economic and Trade Agreement (CETA). Para 1-3,5-7. [online] Available at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_16_446 (last accessed on October 19th 2021)

¹⁰⁹ Joint statement by European Commissioner for Trade and Canada’s Minister of International Trade on Canada-EU trade agreement. Para 3-5. [online] Available at: <https://www.canada.ca/en/global-affairs/news/2016/04/joint-statement-by-european-commissioner-for-trade-and-canada-s-minister-of-international-trade-on-canada-eu-trade-agreement.html> (last accessed on October 19th 2021).

¹¹⁰ View the timeline. Retrieved from https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/view_timeline_consultez_chronologie.aspx?lang=eng (last accessed on October 19th 2021)

¹¹¹ Interinstitutional File: 2016/0220 (NLE) Pages 1,2 [online] Available at: <https://data.consilium.europa.eu/doc/document/ST-10974-2016-INIT/en/pdf> (last accessed on October 19th 2021)

procedure, including: a decision on the agreement's signing, a judgement on the agreement's preliminary application and a decision to seek the European Parliament's approval for the agreement's completion. A common interpretive instrument was also accepted by the representatives of the participating states. This joint document with Canada will offer a binding interpretation of CETA's wording on certain problems.¹¹²

The Council of the European Union, "Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), Article 91, Article 100(2), Article 153(2), Article 192(1) and the first subparagraph of Article 207(4), in conjunction with Article 218(5)," as well as "the proposal from the European Commission," adopted the following decision. "Article 1 The signing, on behalf of the Union, of the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one Part, and the European Union and its Member States, of the other Part, is hereby authorised, subject to its conclusion. The text of the Agreement, together with the Joint Interpretative Instrument and the related Statements and Declarations, are attached to this Decision.* Article 2 The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union. Article 3 This Decision shall enter into force on the day of its adoption."¹¹³

On October 30th, 2016, Canada and the European Union signed CETA, a historic trade agreement during the EU-Canada Summit.¹¹⁴ Then President of the European Commission Jean-Claude Juncker, then President of the European Council Donald Tusk, then Prime Minister of Slovakia Robert Fico, and the Canadian Prime Minister Justin Trudeau signed the Comprehensive Economic and Trade Agreement between the EU and Canada.¹¹⁵

On February 15th, 2017, the European Parliament voted and gave its consent to CETA, and three months later, the Canadian side ratified CETA on May 16th, 2017. Once Canada accepted all the necessary implementing rules, the agreement could be provisionally applied.¹¹⁶

The EU-Canada Comprehensive Economic and Trade Agreement (CETA) came into effect provisionally on September 21st, 2017, after ratification by EU member states in the Council and the European Parliament. However, it did not enter into full and definitive force until all EU member states signed the Agreement. The Commission announced its intention to collaborate with EU member states and Canada to ensure that it is implemented smoothly and effectively.¹¹⁷

¹¹² EU-Canada trade agreement: Council adopts decision to sign CETA. Para 1-3 [online] Available at: <https://www.consilium.europa.eu/en/press/press-releases/2016/10/28/eu-canada-trade-agreement/> (last accessed on October 19th 2021)

¹¹³ Council of the EU. Interinstitutional File: 2016/0206 (NLE). Pages 2,6 [online] Available at: <https://data.consilium.europa.eu/doc/document/ST-10972-2016-REV-1/en/pdf> (last accessed on October 19th 2021)

¹¹⁴ View the timeline. Retrieved from https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/view_timeline_consultez_chronologie.aspx?lang=eng (last accessed on October 19th 2021)

¹¹⁵ EU-Canada trade agreement enters into force. Procedure and next steps. [online] Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_3121 (last accessed on October 19th 2021)

¹¹⁶ Ibid.

¹¹⁷ Ibid Para 4-5

CHAPTER 3. THE AGREEMENT

The Comprehensive Economic and Trade Agreement (CETA) is a forward-thinking trade agreement. It has some of the most robust labour rights, environmental protection, and sustainable development commitments yet incorporated in a trade agreement. CETA combines the EU and Canada's obligations to follow international labour standards, environmental protection, and climate action. These responsibilities are legally binding.¹¹⁸

CETA is a trade agreement between the European Union and Canada. Its goal is to increase commerce while also assisting in the creation of jobs and growth. CETA will reduce customs duties and other trade barriers between the EU and Canada, while also upholding Europe's high standards in areas such as food safety, workers' rights, and the environment, as well as the respect of democracy.¹¹⁹

The participating countries are Canada, on the one part, and all the member states of the European Union, on the other part: The Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Republic of Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Poland, the Portuguese Republic, the Republic of Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, and the Kingdom of Sweden. In the Agreement, Canada and the European Union are mentioned as the "Parties".¹²⁰

According to the preamble of the agreement document, the Parties commit to

- a) solidify their tight economic relationship and build on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization, which was signed on April 15, 1994, and other multilateral and bilateral cooperation mechanisms.
- b) create a larger and more secure market for their goods and services via lowering or eliminating trade and investment restrictions.
- c) establish clear, transparent, predictable and mutually-advantageous rules to govern their trade".¹²¹

Both Parties created this agreement, taking into consideration their mutual pre-existing commitments. The Parties reaffirmed their strong commitment to democracy and fundamental rights as outlined in the Universal Declaration of Human Rights,

¹¹⁸ CETA explained. Para 3. [online] Available at: <https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-explained/> (last accessed on October 19th 2021)

¹¹⁹ CETA chapter by chapter. Para "About the Agreement" [online] Available at: <https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/> (last accessed on October 19th 2021)

¹²⁰ CETA text of the agreement. P. 1-2. [online] Available at: https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf (last accessed on October 19th 2021)

¹²¹ Ibid p. 2

signed in Paris on December 10, 1948, and shared the belief that the proliferation of weapons of mass destruction poses a significant threat to international security. They recognized the value of international security, democracy, human rights, and the rule of law in advancing international commerce and economic cooperation. They also recognized that the terms of this Agreement protect the Parties' authority to regulate inside their territories, as well as their flexibility to pursue legitimate policy goals such as public health, safety, the environment, and the promotion and safeguarding of cultural variety, as well as public morals.¹²²

They reaffirmed their commitments as signatories to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, signed in Paris on October 20, 2005, and acknowledged that states have the right to preserve, develop, and implement their cultural policies, as well as to support their cultural industries in order to strengthen the diversity of cultural expressions. They recognized that the provisions of this Agreement would protect investments and investors' interests, and that they are meant to encourage mutually beneficial business activity, without jeopardizing the Parties' right to govern within their respective regions.¹²³

In addition, they reaffirmed their support and commitment to sustainable development and international trade development, in a manner that contributes to its economic, social, and environmental dimensions. Therefore, they encouraged businesses operating on their territory, or under their authority, to follow internationally recognized corporate social responsibility rules and principles, such as the OECD Guidelines for Multinational Enterprises; and to pursue best practices in ethical business behaviour.¹²⁴

Furthermore, they agreed to enforce this agreement in order for it to be consistent with the implementation of their respective labour and environmental laws, to improve their labour and environmental protection levels, and to stand to the standards of their international labour and environmental obligations. Finally, they acknowledged the strong link between innovation and trade, as well as the importance of innovation for future economic growth, and reaffirmed that their main aim is to promote further cooperation in innovation areas, research and development, science and technology, including the participation of relevant public and private sector entities.¹²⁵

3.1 The legal steps towards the approval of the agreement

When the agreement reaches the point of signing, the Commission outlines the proposals for the Council in order to decide on the following: signature, provisional application and conclusion of the agreement. The Commission translates these recommendations into all EU languages. The Commission's trade department (DG Trade) circulates the suggestions to other Commission departments for evaluation and feedback (a process known as "inter-services consultation"), before they are approved by the 27 Commissioners. Following that, the Commission forwards its formal

¹²² Ibid page 2-3

¹²³ Ibid page 3

¹²⁴ Ibid page 3

¹²⁵ Ibid page 3

proposals for adoption on signature, provisional application and agreement conclusion, to the Council, including all language versions of the agreement as an attachment to its proposal.¹²⁶

In the following, the Council adopts a decision to sign the agreement on the EU's behalf. It then forwards the signed accord to the European Parliament for approval. In the end, the Council adopts the decision to finalise the agreement, only after the consent of the European Parliament.¹²⁷ In detail, the Council accepts the Commission's suggestions and determines whether it should sign them. Following this judgment, the Commission promptly signs the accord. The agreement is formally signed by the two negotiating parties. The person who will sign on behalf of the EU is generally appointed by the Council. It is frequently the EU Trade Commissioner or a government minister from the nation that holds the Council presidency during the semester of the signing. If the Council decides to apply the agreement fully provisionally or in part provisionally, the EU can inform the depositories for its decision. After the signature from both sides, the Council reviews the proposal for conclusion and submits the agreement to Parliament for approval. This is referred to as a "saisine". The accord is sent to Parliament. Concerning the agreement, the Parliament and its trade committee (INTA) engage with representatives from business, trade unions, environmental groups, and other outside specialists. The committee prepares and votes on a report on the agreement. The report is intended to serve as formal guidance to the plenary session of the Parliament, which votes on whether to approve the deal, with a simple yes/no vote.¹²⁸

3.2 The scope of the Agreement

The Agreement expands in a variety of economic areas related to trade. It prioritises trade, and it proceeds to include subsidies, investment, entry of natural persons for business purposes, professional qualifications, domestic regulations, financial services, government procurement, intellectual property and labour. In addition, the text includes chapters regarding the administrative and institutional provisions, transparency, and dispute settlement, exceptions from the agreement, provisions on entering to force or ending in the future.

According to Article 1.2 of the agreement, in regard to the agreement a citizen is "(a) for Canada, a natural person who is a citizen of Canada under Canadian legislation" and "(b) for the EU Party, a natural person holding the nationality of a Member State"; while as central government is considered "(a) for Canada, the Government of Canada" and "(b) for the EU Party, the European Union or the national governments of its Member States".¹²⁹

¹²⁶ Negotiating EU trade agreements. Page 5. Para 15-19. [online](last accessed on October 19th 2021) Available at: https://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf

¹²⁷ EU trade agreements. Role of the Council Para 5-6 [online] (last accessed on October 19th 2021) Available at: <https://www.consilium.europa.eu/en/policies/trade-policy/trade-agreements/>

¹²⁸ Negotiating EU trade agreements. Page 5. Para 20-25. [online] Available at: https://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf (last accessed on October 19th 2021)

¹²⁹ Ibid Article 1.2

In Article 1.3, the Parties determine the geographical scope of the agreement. For Canada it is applied (unless specified otherwise) to “the land territory, air space, internal waters, and territorial sea of Canada. The exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 (“UNCLOS”). The continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS.” Regarding the European Union, it is applied “to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties”. This Agreement also applies to parts of the European Union customs territory that are not covered by the above-mentioned treaties in terms of tariff treatment of products.¹³⁰

In article 1.4, both Parties declared that “The Parties hereby establish a free trade area in conformity with Article XXIV of GATT 1994 and Article V of the GATS”, opening a free trade space between involved members, while they “affirm their rights and obligations with respect to each other under the WTO Agreement and other agreements to which they are party” (Article 1.5). In addition, “Unless otherwise specified in this Agreement, each Party shall ensure that a person that has been delegated regulatory, administrative or other governmental authority by a Party, at any level of government, acts in accordance with the Party’s obligations as set out under this Agreement in the exercise of that authority” (Article 1.10).¹³¹

According to Articles 2.2 and 2.3, national treatment and market access for goods must comply with Article XXIV and Article III of the GATT 1994 respectively. Article III was included in the text of CETA to ensure that member states and Canadian governments of non-federal level are not treated “less favourably” compared to the Canadian federal government and the institutions of the EU.¹³²

In order to avoid any technical barriers to trade, the Parties created a specific chapter, Chapter 4, to enhance cooperation and monitor together technical regulations regarding testing and certifying products. The Chapter also includes incorporated articles from the TBT Agreement. However, this cooperation is not obligatory, as either side is allowed to maintain their standards. In the same spirit, the Parties agrees to enhance their collaboration in the areas of science and forestry. Chapter 25 was included in CETA to create a path for a dialogue like the economic one.¹³³

Chapter 26 describes how the EU and Canada administer and implement CETA. It describes how the EU and Canada should organize the various committees established by the agreement, as well as the legal implications of their judgments.¹³⁴ The parties created the CETA Joint Committee, which was composed of representatives from the European Union and Canada. The Minister of International Trade of Canada and the Member of the European Commission responsible for Trade, or their designees, would then co-chair the CETA Joint Committee. The CETA Joint Committee will convene once a year or when a Party requests it, and will agree on its meeting

¹³⁰ Ibid Article 1.3

¹³¹ Ibid p. 7 Article 1.4, 1.5

¹³² Ibid p. 9 Articles 2.2, 2.3

¹³³ CETA chapter by chapter. Chapter 4. [online] Available at: <https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/> (last accessed on October 19th 2021)

¹³⁴ Ibid Chapter 26.

schedule and topic. The CETA Joint Committee oversees all issues related to trade and investment between the Parties, as well as the implementation and execution of the Agreement. Either Party can consult with the Joint Committee, regarding a matter relevant to the enforcement and implementation of CETA, as well as any other subject involving trade and investment between the Parties.¹³⁵

The main goal of the CETA Joint Committee was basically to supervise and facilitate the implementation and application of this Agreement and to supervise the work of all specialized committees and other bodies established under this Agreement. Other responsibilities were focused on establishing its own procedural rules, taking the actions outlined in Article 26.3 and taking into account any matter of concern relating to a region covered by this Agreement (without prejudice to Chapters Eight (Investment), Twenty-Two (Trade and Sustainable Development), Twenty-Three (Trade and Labour), and Twenty-Four (Trade and Environment)).¹³⁶

The CETA Joint Committee has the authority to delegate responsibilities to the specialized committees established pursuant to Article 26.2. Furthermore, the Committee can communicate with all interested parties, including private sector and civil society organizations, consider or agree on amendments as provided in this Agreement, and study the development of trade between the Parties and grasp ways to further enhance trade relations. The Committee can make recommendations suitable for promoting the expansion of trade and investment as envisaged in this Agreement, which will be binding on tribunals established under Section F of Chapter Eight (Resolution of investment disputes between investors and states) and Chapter Twenty-Nine (Dispute Settlement). Lastly the Committee can amend or carry the tasks that was assigned to specialized committees established pursuant to Article 26.2, or dissolve or establish any specialized committees and bilateral dialogues to assist in the performance of its tasks; and take other actions in the exercise of its functions as the Parties determine.¹³⁷

Some of the Specialised Committees have already been created and included in the Agreement.

1. The Committee on Trade in Goods examines issues such as goods, trade, tariffs, technical trade barriers, the Protocol on Mutual Acceptance of Conformity Assessment Results, and intellectual property rights connected to goods.
2. The Agriculture Committee, the Wines and Spirits Committee, and the Joint Sectoral Group on Pharmaceuticals were constituted as well, and they report to the Committee on International Trade in Goods.
3. The Committee on Services and Investment focuses on cross-border services trade, investment, temporary entry, electronic commerce, and service-related intellectual property rights
4. The Committee on Services and Investment formed a Joint Committee on Mutual Recognition of Professional Qualifications, which reports to the Committee on Services and Investment. Other Committees are the Joint

¹³⁵ CETA text of the agreement. Article 26.1. [online] Available at: https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf (last accessed on October 19th 2021)

¹³⁶ Ibid.

¹³⁷ Ibid.

- Management Committee for Sanitary and Phytosanitary Measures, which deals with sanitation and phytosanitary issues.
5. The Committee on Government Procurement, which investigates government procurement issues.
 6. The Financial Services Committee, which deals with financial services issues.
 7. The Committee on Trade and Sustainable Development, which deals with sustainable development issues.
 8. The Regulatory Cooperation Forum, which mainly discusses regulatory cooperation issues, and
 9. The CETA Committee on Geographical Indications, which deals with geographical indications issues.

The abovementioned Committees can also address issues out of their scope and competence if this action facilitates the resolution of a matter that cannot otherwise be resolved by the relevant specialised committee. This move is usually requested by either Party, or upon a referral from the relevant specialised committee, or when preparing for a discussion in the CETA Joint Committee.¹³⁸

One should not neglect to mention the Joint Customs Cooperation Committee (JCCC) which was established under the 1998 Agreement on Customs Cooperation and Mutual Assistance in Customs Matters between the European Community and Canada, signed in Ottawa on December 4, 1997. The JCCC deals with issues such as rules of origin, origin procedures, customs and trade facilitation, border measures, and temporary suspension of prefeasibility. This Committee was not established by the agreement; it was given permission to act under the CETA Joint Committee's auspices.¹³⁹

In the end, it is the Joint Committee that is charged with the responsibility of the final decision. When this Agreement so provides, the CETA Joint Committee shall have the authority to make decisions in all matters for the purpose of achieving the goals of this Agreement. The CETA Joint Committee's decisions are obligatory on the Parties, subject to the completion of any relevant internal requirements and processes, and the Parties should indeed follow them through. The Joint Committee on CETA may also make recommendations. The CETA Joint Committee's judgments and recommendations will be made by mutual consent. In regard to sharing information with either Party, when a Party provides material to the CETA Joint Body or any specialized committee formed under this Agreement that is considered confidential or protected from disclosure under its laws, the other Party must treat it as such. Finally, in order to facilitate the function of the Joint Committee, each Party has to appoint a contact point that will be in open communication with the contact point of the other Party, as well as the institutional bodies established under this agreement, in order to facilitate their operation. Once a Party requests a consultation with the other Party, the Committees or the point of contact, the meeting should be held in person, or through videoconference, within a month.¹⁴⁰

One of the key factors for the success of the Agreement is transparency. Chapter 27 ensures that the EU and Canada publish and make available to individuals who are interested the laws, regulations, procedures, and administrative judgements on the

¹³⁸ Ibid Article 26.2

¹³⁹ Ibid Article 26.2

¹⁴⁰ Ibid Articles 26.3, 26.4, 26.5, 26.6

topics covered by CETA. It also ensures that the EU and Canada share information and answer to inquiries about measures affecting CETA implementation in a timely manner. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of reviewing and, if necessary, correcting final administrative actions relating to subjects covered by this Agreement. Each Party must ensure that its tribunals are impartial and independent of the agency or body tasked with administrative enforcement, and that they have no significant stake in the result of the case. Both Parties must ensure that, in the abovementioned tribunals or procedures, “the parties to the proceeding are provided with the right to a reasonable opportunity to support or defend their respective positions and a decision based on the evidence and submissions of record or, if required by its law, the record compiled by the administrative authority”. Each Party shall ensure that such decisions are implemented by and control the practice of the offices or authorities with respect to the administrative action at issue, subject to appeal or further review as authorized by its legislation. In addition, the EU and Canada have agreed to work together in international organizations to improve transparency in international trade and investment.¹⁴¹

In case of a dispute between the involved Parties, chapter 29 clarifies the steps that can be taken to lead to a resolution the soonest possible. Unless otherwise specified in this Agreement, this Chapter regulates any disagreement over the interpretation or application of the terms of this Agreement (Article 29.2). A Party may request consultations with the other Party in written form on any topic covered by Article 29.2. The petitioning Party must forward the request to the replying Party and clarify why it should be submitted, including identifying the precise measure in question and the legal basis for the complaint. Within 30 days of the replying Party’s receipt of the request, the Parties will meet for discussions. Consultations must begin within 15 days of the responding Party receiving the request in circumstances of urgency, such as those involving perishable or seasonal goods or services that quickly lose their commercial worth. If a measure has a negative impact on trade and investment between the Parties, the Parties may opt to enter the procedures of mediation. In case there is no mutually agreed resolution to the issue within “45 days of the date of receipt of the request for consultations” (or 25 days in circumstances of urgency), the requesting Party has the right to submit to the responding Party a petition to create an arbitration panel to resolve the issue. Within 150 days of the arbitration panel’s formation, the parties will receive an interim report from the arbitration panel.¹⁴²

The report must include factual findings and conclusions about whether the responding Party has met its commitments under this Agreement. Each Party may submit written comments on the interim report to the arbitration panel, subject to the arbitration panel’s time constraints. After considering any such comments, the arbitration panel may revise its report or conduct any additional investigation it deems necessary. The arbitration panel’s interim report is to be kept private. Within 30 days of the interim report, the arbitration panel will provide a final report to the parties and the CETA Joint Committee. In urgent cases, the process must be accelerated. The

¹⁴¹ CETA chapter by chapter. Chapter 27. [online] Available at: <https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/> (last accessed on October 19th 2021)

¹⁴² CETA text of the agreement. Articles 29.1- 29.6. [online] Available at: https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf (last accessed on October 19th 2021)

Parties are bound by the arbitration panel's decision in the final panel report. Subject to paragraph 39 of Annex 29-A, each Party shall make the final panel report publicly available. The responding Party must take all necessary steps to comply with the panel's final report. The responding Party must notify the other Party and the CETA Joint Committee of its compliance intentions no later than 20 days after receiving the final panel report from the Parties. The arbitration panel must interpret the terms of this Agreement in accordance with the established public international law interpretation norms, including those outlined in the Vienna Convention on the Law of Treaties. The arbitration panel must also consider relevant interpretations in the WTO Dispute Settlement Body's findings of Panels and the Appellate Body. The arbitration panel's decisions cannot increase or decrease the rights and duties set forth in this Agreement. At any moment throughout the course of a dispute under this Chapter, the Parties may adopt a mutually agreed-upon solution. Any such solution must be reported to the CETA Joint Committee and the arbitration panel. The arbitration panel's activity and the proceedings will be concluded upon notification of the mutually approved settlement.¹⁴³

The final text does not neglect to clarify the procedures for CETA to enter into force, possible amendments, as well as a potential dissolvent of the agreement. In regard to the final text of the Agreement, the Parties reserve the right to agree in writing to modify this Agreement. After the Parties exchange written notices indicating that they have completed their respective applicable internal requirements and processes necessary for the amendment's entry into force, or on the date agreed upon by the Parties, an amendment enters into force. In addition, the CETA Joint Committee may decide to revise the Agreement's protocols and annexes. The Parties may approve the decision of the CETA Joint Committee in accordance with their respective internal requirements and procedures for the amendment's entrance into effect, which will take effect on a mutually agreed date. "This procedure shall not apply to amendments to Annexes I, II and III and to amendments to the annexes of Chapters Eight (Investment), Nine (Cross-Border Trade in Services), Ten (Temporary Entry and Stay of Natural Persons for Business Purposes) and Thirteen (Financial Services), except for Annex 10-A (List of Contact Points of the Member States of the European Union)"¹⁴⁴

In case one of the involved parties desires to end the Agreement, said Party may terminate this Agreement by notifying the General Secretariat of the Council of Europe and the Department of Foreign Affairs, Trade and Development of Canada, or their respective successors, in writing. This Agreement will be terminated 180 days after the respective notice is received. A copy of the notification of termination must be provided to the CETA Joint Committee by the Party issuing the notice. Regardless of paragraph 1, if this Agreement is terminated, the provisions of Chapter Eight (Investment) will remain in effect for a period of 20 years from the date of termination in respect of investments made before to such date.¹⁴⁵

¹⁴³ Op. cit. Articles 29.9- 29.12, 29.16-29.19.

¹⁴⁴ Ibid Article 30.2

¹⁴⁵ Ibid Article 30.9

3.3 The economic changes

As mentioned previously, in Article 1.3, this Agreement shall also apply to the areas of the European Union customs territory that is not mentioned in the Treaty on European Union nor in the Treaty on the Functioning of the European Union, regarding the tariff treatment of goods. This means that tariff provisions of CETA will also be implemented in Monaco, Akrotiri and Dekelia, Andorra and San Marino.¹⁴⁶

The basic change deriving from CETA is the reduction and elimination of customs duties on imports as mentioned in Article 2.4. In the original text, the tariff elimination was detailed in ANNEX 2-A, which determined the chronological order of the reduction on customs duties. Except as otherwise provided in this Annex, upon the date of entry into force of this Agreement, the Parties shall eliminate all customs duties on originating goods of Chapters 1 through 97 of the Harmonized System that provide for a most-favoured-nation (“MFN”) rate of customs duty imported from the other Party.¹⁴⁷ In the span of a decade following CETA entering into effect, the Parties shall exchange quarterly figures at the tariff line level for HS Chapters 1 through 97, on imports of goods from the other Party that are subject to MFN-applied tariff rates, and tariff preferences under this Agreement. Unless the Parties decide otherwise, this period will be renewed for five years and may be subsequently extended by them.¹⁴⁸

“For greater certainty, when the European Union applies a customs duty for the items 1001 11 00, 1001 19 00, high quality common wheat of items ex 1001 99 00, 1002 10 00 and 1002 90 00, at a level and in a manner so that the duty-paid import price for a specified cereal will not be greater than the effective intervention price, or if there is a modification of the current system, the effective support price, increased by 55 per cent as set out in Commission Regulation (EC) No 642/2010 of 20 July 2010 on rules of application (cereal sector import duties) of Council Regulation (EC) No 1234/2007, the European Union shall apply the tariff elimination staging category towards any calculated duty that would be applied as per the above regulation, as follows:”¹⁴⁹

Year	Applied Duty
1	87.5 % of the duty calculated as per EC Reg. 642/2010
2	75 % of the duty calculated as per EC Reg. 642/2010
3	62.5 % of the duty calculated as per EC Reg. 642/2010
4	50 % of the duty calculated as per EC Reg. 642/2010
5	37.5 % of the duty calculated as per EC Reg. 642/2010
6	25 % of the duty calculated as per EC Reg. 642/2010
7	12.5 % of the duty calculated as per EC Reg. 642/2010

¹⁴⁶ Taxation and Customs Union. [online] Available at: https://ec.europa.eu/taxation_customs/territorial-status-eu-countries-and-certain-territories_en (last accessed on October 19th 2021)

¹⁴⁷ ANNEX 2-A. p. 1 para 2. [online] Available at: <https://data.consilium.europa.eu/doc/document/ST-10973-2016-ADD-1/en/pdf> (last accessed on October 19th 2021)

¹⁴⁸ CETA text of the agreement. Article 30.3 [online] Available at: https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf (last accessed on October 19th 2021)

¹⁴⁹ Op. cit. 152 Para. 2d.

8 and each subsequent year	0 % of the duty calculated as per EC Reg. 642/2010 (duty-free)
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(Interinstitutional File: 2016/0206 (NLE), 2016)¹⁵⁰

The Parties may discuss on speeding and widening the scope of the removal of customs charges on imports between the Parties, at the request of one of them. When approved by each Party in accordance with its applicable legislative procedures, a decision by the CETA Joint Committee to accelerate or eliminate a customs tax on a good supersedes any duty rate or staging category decided pursuant to the Parties' Schedules in Annex 2-A for that good.¹⁵¹

According to Article 2.5, “a Party shall not refund, defer or suspend a customs duty paid or payable on a non-originating good imported into its territory”, when said good, or an identical material, is used to produce another good that is later exported back to the other Party. A Party may not adopt or maintain any duties, taxes, or other fees and charges imposed on, or in connection with, the export of a good to the other Party. Nor any internal taxes or fees and charges on a good exported to the other Party, which are in excess of those that would be imposed on those goods when destined for the other Party. In order to maintain the existing terms of the Agreement, neither Party can increase the existing custom duties or adopt new ones on a good originating in the Parties. However, custom duties can be applied on goods that are not included in the Agreement, or can be increased based on Annex 2-A of CETA and the WTO agreements for goods that have been included. In addition, a Party maintains the ability to discontinue the preferential tariff treatment granted on a good for a while, in case the other Party has committed a series of violations of customs legislation to obtain the preferential tariff treatment. In such case, the issue is referred to the Joint Committee for resolution, as mentioned earlier. A good point that is already in transit between the Parties on the day the temporary suspension takes effect is exempt from the temporary suspension.¹⁵²

“In accordance with Article VIII of GATT 1994, a Party shall not adopt or maintain a fee or charge on or in connection with importation or exportation of a good of a Party that is not commensurate with the cost of services rendered or that represents an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.” Furthermore, a Party shall not impose a customs duty on a good, regardless of its origin, that re-enters its territory after its export to the territory of the other Party in order to be modified, regardless of whether such repair or alteration could be performed in the territory of the first Party. A Party shall not levy a customs charge on a good imported temporarily from the territory of the other Party for repair or alteration, regardless of its origin.¹⁵³

Furthermore, there are restrictions applied to imports and exports. A Party shall not impose or maintain any limitation or restriction on the importation of any good of the other Party, or on the exportation or sale for export of any good destined for the territory of the other Party, except in conformity with Article XI of the GATT 1994. To that aim, this Agreement incorporates and makes a part of Article XI of the GATT

¹⁵⁰ Ibid 154

¹⁵¹ CETA text of the agreement. Article 2.4 para 4 [online] (last accessed on October 19th 2021) Available at: https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf

¹⁵² Ibid Articles 2.6- 2.8

¹⁵³ Ibid Articles 2.9, 2.10

1994. In case a Party decides to prohibit or restrict a good of a third country to enter or leave its territory, the Party can also prohibit the import of said good to the territory of the other Party from the third country, or prohibit the export of that good to the third country, through the territory of the other Party.¹⁵⁴

Moreover, the procedure to facilitate customs and trade has been outlined in Chapter 6. To facilitate trade between the Parties and minimize costs for importers and exporters, each Party should adopt or maintain streamlined customs procedures for the efficient release of goods. In this manner, the facilitated procedures ensure the release of goods in a time frame that is no lengthier than necessary to ensure compliance with the laws of the exporting Party. Other facilitations include permission of products, including controlled or regulated goods, to be discharged at the initial point of entry to the degree possible. Attempt to expedite the discharge of products that require emergency clearance. CETA allows an importer or his or her agent to withdraw goods from customs control before the final determination and payment of customs duties, taxes, and fees. A Party may require that an importer provide sufficient guarantee in the form of a surety, a deposit, or some other relevant document before releasing the goods; and provide for simplified documentation requirements for the entry of low-value goods, as determined by each Party, in accordance with its law.¹⁵⁵

Aiming to ensure the success of CETA, both the EU and Canada have agreed to provide companies with subsidies, in accordance with Article 1.1 of the SCM Agreement.¹⁵⁶ If a Party believes that a subsidy or other kind of government support connected to trade in services provided by the other Party is harming or may harm its interests, it may voice its concerns to the other Party and request consultations on the matter. That request will be given full and sympathetic consideration by the replying Party. During consultations, a Party may request additional information on a subsidy or specific instance of government support connected to trade in services offered by the other Party, such as the policy purpose, quantity, and any actions taken to mitigate the potential for trade distortion. The replying Party shall use the consultations to try to eliminate or minimize any negative consequences of the subsidy, or the specific instance of government support related to trade in services, on the asking Party's interests. The above is applied except for the sectors of agriculture and fisheries.¹⁵⁷

CETA encourages the increase of investment between the EU and Canada. Chapter 8 outlines specific steps to increase investment between the EU and Canada, safeguard investors, and guarantee governments treat them fairly. The chapter removes barriers to foreign investment, such as foreign equity caps and performance requirements; allows EU investors to transfer capital from Canada to the EU and vice versa; establishes transparent, stable, and predictable investment rules; ensures that governments will treat foreign investors fairly; and establishes a new Investment

¹⁵⁴ Op cit 158. Article 2.11

¹⁵⁵ Ibid Article 6.3

¹⁵⁶ Available at: wto.org/english/docs_e/legal_e/24-scm.pdf

¹⁵⁷ Op. cit. 158 Article 7.3

Court System (hereinafter ICS), to enable in-country arbitration. The right to regulate at all levels of government is also confirmed in this chapter.¹⁵⁸

Trade in services is also important for both Parties. Chapter 9 makes it easier for EU citizens and businesses to serve Canadian clients, and vice versa. It includes legal, accounting, transportation, and telecommunications services supplied from the EU to Canada, as well as tourism services where a Canadian customer must physically travel from Canada to the EU to consume the service, and vice versa. The EU and Canada agree to provide each other with fair and equal access to their respective service markets. The EU and Canada have allowed exclusions in specific service industries because the sectors in question – such as audio-visual services or certain aviation services – are sensitive. Furthermore, the ability of governments to regulate and provide services in the public interest is explicitly supported in this chapter.¹⁵⁹

Furthermore, CETA facilitates the temporary entry and stay of natural persons for business purposes. Chapter 10 provides legal certainty for trained workers who enter the EU or Canada on a temporary basis to do business. It states in a clear and predictable manner the categories of professionals covered, as well as the industries in which they can work; the maximum length of their stay; and the fact that EU professionals will be treated equally in Canada and vice versa.¹⁶⁰ In addition, chapter 11 establishes a framework for Canada to recognize professional qualifications gained in the European Union and vice versa. Professionals from both sides of the Atlantic would be able to practice in each other's area. CETA delegated the task of negotiating a proposal for so-called mutual recognition for CETA integration to the relevant authorities or professional groups in both the EU and Canada.¹⁶¹

Access to the markets of the other Party is crucial for investors from both sides. Chapter 13 allows financial institutions and investors in the EU and Canada to gain access to each other's markets on an equal footing. Certain circumstances apply, and the requirements are completely compliant with EU and Canadian prudential and regulatory regulations. Furthermore, financial services companies can only provide cross-border services in a limited range of industries, such as certain insurance and banking services. This law also establishes a Financial Services Committee to assist both parties in overseeing and regulating the financial services sector. The chapter enables the EU and Canada to safeguard their respective financial systems' security and integrity. It excludes benefits such as retirement, health care and social security.¹⁶²

In order to enhance benefits from CETA for the economy, the Parties have agreed to grant special rights and privileges to state enterprises, monopolies and companies.

¹⁵⁸ CETA chapter by chapter. Chapter 8. [online] Available at: <https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/> (last accessed on October 19th 2021)

¹⁵⁹ Ibid Chapter 9.

¹⁶⁰ Ibid chapter 10

¹⁶¹ Ibid chapter 11

¹⁶² Ibid chapter 13

The EU and Canada agree in this chapter not to meddle in or potentially disrupt the level playing field for private businesses. Both parties will ensure that state-owned companies, monopolies, and firms with special privileges do not discriminate against the other party's goods, services, or investments. This ensures that competition between private and government-owned businesses is not impacted. The regulations ensure that both parties have complete control over how they deliver public services to their constituents.¹⁶³

All commodities, services, and construction services purchased by the government are referred to as government procurement. It could include anything from office supplies to materials and services for huge infrastructure projects.¹⁶⁴ Chapter 19 outlines the sectors in which EU and Canadian enterprises can give goods and services to each other's governments at all levels - national, regional, provincial, and local. Businesses must follow specific rules for this to happen, including: the worth of the products, services, or contract in question; the identity of the consumer; and the commodities and services that are permitted.¹⁶⁵

Regarding Intellectual Property, Chapter 20 relies on current international intellectual property (IP) legislation to produce EU-Canada-coordinated norms and standards. The chapter also lays out procedures for preventing IP infringements and identifies places where the two parties might work together more closely.¹⁶⁶ The chapter emphasises on the trade of pharmaceutical products aiming for the treatment of physiological functions, technology, rights management information, trademarks, geographical indications, designs, patterns, data protection, plant varieties and intellectual property rights.¹⁶⁷

In chapter 22, the EU and Canada acknowledge that economic growth, social development, and environmental conservation are all intertwined. Both parties believe that economic growth should promote their social and environmental objectives. The chapter also establishes a Joint Committee on Trade and Sustainable Development, and both parties agree to promote interest group gatherings.¹⁶⁸

The assurance of labour rights is a fundamental aspect of society in regard to the economy. In chapter 23, the EU and Canada pledge to upholding the International Labour Organization's (ILO) labour standards, as well as ratifying and implementing the ILO's core conventions. The chapter safeguards each party's ability to regulate

¹⁶³ Ibid chapter 18

¹⁶⁴ Government Procurement. Para 1. [online] Available at: <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/gp-mp/index.aspx?lang=eng> (last accessed on October 19th 2021)

¹⁶⁵ Op. cit. 168 Chapter 19

¹⁶⁶ Ibid chapter 20

¹⁶⁷ CETA text of the agreement. Chapter 20 [online] Available at: https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf (last accessed on October 19th 2021)

¹⁶⁸ Op.cit 171 chapter 22 Available at: <https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/> (last accessed on October 19th 2021)

labour issues. It precludes either party from neglecting or degrading labour standards in the name of increased commerce. It guarantees that non-governmental organizations are involved in carrying out the provisions of the chapter. It encourages collaboration with the ILO. Finally, it sets a method to ensure that both parties implement the chapter's obligations (enforcement mechanism).¹⁶⁹

Furthermore, the participants did not neglect to include environmental provisions in the agreement. This chapter commits the EU and Canada to putting international environmental treaties into practice. It protects each side's right to regulate on environmental issues; requires each side to enforce its domestic environmental laws; and prohibits either side from easing its regulations in order to enhance commerce. The chapter promotes forest and fisheries protection and sustainable management. It also ensures the participation of non-governmental organizations.¹⁷⁰

Finally, in regard to movement of capital between the Parties, the Parties should consult with one another in order to facilitate capital mobility between them by continuing to execute their policies on capital and financial account liberalization and promoting a stable and secure framework for long-term investment (Article 30.4). One should not neglect to mention that previous bilateral agreements between Canada and a handful of EU Member States individually have either been terminated, suspended or incorporated to CETA (Article 30.10).¹⁷¹

3.4 The infringement in the exclusive competence of EU

Member States / Application of provisional basis

The temporary application of international treaties is a regular practice in international law. It is regulated by Article 25 of the Vienna Convention on the Law of Treaties (VCLT), which states that it may apply to the entire treaty or sections of it if the parties agree. In the same way as entry into force does, provisional application brings a treaty into force. The key distinction is that such legal force is provisional, which means that the Parties can terminate the (provisionally applied) pact in a simpler manner than they can terminate a fully in force treaty. In terms of legal repercussions at the international level, provisional application is thus comparable to entrance into force.¹⁷²

Provisional application has shown to be an effective policy tool to ensure expediency in the application of international treaties while the (sometimes lengthy and complex) domestic constitutional procedures required for ratification are completed. Many international accords have been implemented on a temporary basis, typically for long

¹⁶⁹ Ibid chapter 23

¹⁷⁰ Ibid chapter 24

¹⁷¹ CETA text of the agreement. Article 30.4 [online](last accessed on October 19th 2021) Available at: https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf

¹⁷² The provisional application of CETA: Selected issue. Para 1. [online] Available at: http://www.qil-qdi.org/provisional-application-ceta-selected-issues/#_ftn1 (last accessed on October 19th 2021)

periods. According to EU practice, almost all free trade agreements (FTAs) completed in recent years have been implemented provisionally before their respective entrance into force. For the EU, the appeal of such an international law instrument is particularly clear. Given that EU FTAs are always signed as mixed agreements requiring 28+1 ratifications, provisional application is a powerful antidote to potentially chronic delays.¹⁷³

As indicated by prior practice, the provisional application of EU FTAs has been uncontroversial for many years. However, the revelation that significant FTAs, notably CETA, would be applied provisionally has sparked a heated legal and political discussion across the EU and its member states. The provisional application of CETA has been subject to several conditions imposed by the German Constitutional Court, and Belgium was only able to vote in favour of it in the Council after issuing a declaration that provided “political assurances” to the government of Wallonia, whose approval was required under Belgian constitutional rules. Nevertheless, it should be underlined that these domestic episodes have minimal relevance on the international law repercussions of interim implementation.¹⁷⁴

According to Article 30.7 of the text of the agreement, the Parties in compliance with their respective internal requirements and procedures will adopt this Agreement. This Agreement will take effect on the first day of the second month after the Parties exchange written notifications certifying that their respective internal requirements and processes have been fulfilled or on such other date as the Parties may agree. The Parties may provisionally apply this Agreement beginning on the first day of the month following the date on which they have notified each other that their respective internal requirements and procedures necessary for the provisional application of this Agreement have been completed, or on any other date agreed upon by the Parties. “If this Agreement, or certain provisions of this Agreement, is provisionally applied, the Parties shall understand the term “entry into force of this Agreement” as meaning the date of provisional application.” During the interim application of this Agreement, the CETA Joint Committee and other bodies constituted under it may execute their powers. If the provisional implementation of this Agreement is discontinued, any decisions made in the performance of their functions will become invalid.¹⁷⁵

If a Party does not intend to apply a condition of this Agreement provisionally, it must first notify the other Party about the measures it will not apply provisionally and offer to engage into consultations as soon as possible. The other Party has 30 days to either object, in which case this Agreement will not be implemented provisionally or give its own notification of equivalent sections of this Agreement, if any, that it does not intend to apply provisionally. If the other Party objects within 30 days of the second notification, this Agreement will not be applied provisionally. By written notice to the

¹⁷³ Ibid para 2.

¹⁷⁴ Ibid para 3

¹⁷⁵ CETA text of the agreement. Article 30.7 [online] (last accessed on October 19th 2021) Available at: https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf

other Party, a Party may terminate the interim application of this Agreement. The termination will take effect on the first day of the second month after the notification is received.¹⁷⁶

In the face of this opposition, the Commission backed down from its previous position that the European Union had sole authority to sign and finalize all aspects of CETA. It was decided that CETA would be a mixed agreement, meaning that it would be signed by both the European Union and the Member States. This meant that, in order to become a party to CETA, both the European Union and each of the 28 EU Member States (including at least 38 national parliaments) had to complete the appropriate measures in accordance with their unique constitutional requirements.¹⁷⁷

On October 5th, 2016, the Council published its decision to exclude certain articles from provisional application. The excluded provisions were the investment protection provisions on Investment, as detailed in Chapter 8 (8.1-8.8), certain paragraphs on Chapter 13 on Financial Services, Articles 20.12, 27.3, 27.4 and paragraph 7 of Article 28.7. In addition, “the provisional application of Chapters 22, 23 and 24 of the Agreement shall respect the allocation of competences between the Union and the Member States”.¹⁷⁸

The decision derived bearing into account the disputed areas of competence in the context of the EUSFTA proceedings before the CJEU. In detail all provisions in Chapter Eight on Investment relating to investment protection, including provisions ensuring fair and equitable treatment, as well as complete protection and security for expropriation, investors, and covered investments were excluded. Furthermore, the Council restricted the use of investment provisions on a trial basis, excluding portfolio investment from the liberalization of foreign direct investment. The provisions on the ICS in Chapters Eight and Twenty-Eight were also excluded. As for Chapter Thirteen, the Council excluded only specific clauses which apply on Financial Services “only in so far as they concern portfolio investment, protection of investment or the resolution of investment disputes between investors and States”. Lastly, regarding Chapter Twenty and Chapter Twenty-Seven, relevant measures relating to the criminal enforcement of intellectual property rights and administrative proceedings at the level of Member States were excluded, respectively.¹⁷⁹

On November 29, 2016, MEP Emmanuel Morel filed two questions for written answers. “The Commission has already announced that it will decide in the coming weeks whether CETA will be an EU-only or a mixed agreement. 1. If the Commission does make CETA a mixed agreement, could it be implemented provisionally once it

¹⁷⁶ Ibid. Article 30.7

¹⁷⁷ Van Bael & Bellis. Para 5. [online] (last accessed on October 19th 2021) Available at: https://www.vbb.com/media/Insights_News/VBB_Client_Alert_Provisonal_application_CETA_2017_09_25.pdf

¹⁷⁸ Interinstitutional File: 2016/0220 (NLE) p. 4-6 [online] (last accessed on October 19th 2021) Available at: <https://data.consilium.europa.eu/doc/document/ST-10974-2016-INIT/en/pdf>

¹⁷⁹ Op. Cit 177

has been ratified by the European Parliament, but before the national parliaments have done so? Would a mixed CETA agreement continue to be implemented if a national parliament voted against it, and unless the European Council took a unanimous decision to the contrary?”¹⁸⁰

On a written answer for the Parliamentary questions, Ms Malmström on behalf of the Commission, stated. “Following the adoption by the Council of the decisions on the signature and provisional application of EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the signature of the Agreement at the EU-Canada Summit of 30 October 2016, the European Parliament has now given its consent. Both the Commission and the Council have confirmed that, in line with past precedents of other EU Free Trade Agreements (FTAs), CETA will be provisionally applied after the European Parliament has given its consent. Provisional application of mixed FTAs allows EU citizens entrepreneurs and companies to promptly benefit from the opportunities trade agreements offer. For instance, national ratification of the EU-Korea FTA took over 4 years. During this period the agreement was provisionally applied which allowed EU exports to South Korea to grow by 55%. The EU’s EUR 7.6 billion trade deficit with Korea prior to the FTA turned into a surplus of EUR 7.3 billion. Since CETA was adopted by the Council as a mixed agreement, it can only enter into force fully and definitively when all EU Member States have ratified the Agreement in line with their national procedures. 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”.¹⁸¹

On May 16th 2017, the Court of Justice of the European Union (hereinafter CJEU) published Opinion 2/15, after a request by the European Commission for its opinion, in order to clarify which provisions are of shared competence or exclusive competence (either of the EU or a Member State), regarding another trade agreement between the EU and Singapore.¹⁸²

The scope of CETA’s provisional application is affected by this ruling in at least two manners. First, when the Council’s decision is interpreted in conjunction with Opinion 2/15, it becomes evident that CETA’s temporary implementation excludes topics that, according to Opinion 2/15, fall within the exclusive competencies of the European Union. Nevertheless, the European Union may accede to the provisional application of provisions relating to foreign direct investment post-admission

¹⁸⁰ Parliamentary questions [online] (last accessed on October 19th 2021) Available at: https://www.europarl.europa.eu/doceo/document/E-8-2016-008912_EN.html

¹⁸¹ Parliamentary questions. [online] (last accessed on October 19th 2021) Available at: https://www.europarl.europa.eu/doceo/document/E-8-2016-008912-ASW_EN.html#def1

¹⁸² Opinion 2/5. The request for an opinion [online] Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62015CV0002%2801%29> (last accessed on October 19th 2021)

protection, according to the CJEU. Second, the CJEU ruled that the goal of sustainable development, which includes both labour and environmental protection as mutually reinforcing elements, and the conduct of trade in support of that goal, are important parts of the common commercial policy. The CJEU decided that the European Union had exclusive power over the EUSFTA chapter on sustainable development after finding that the parties to the EUSFTA did not aim to harmonize labour and environmental requirements. As a result, if CETA Chapters 22 to 24 have no harmonising effect, Opinion 2/15 implies that those chapters fall under the exclusive jurisdiction of the EU.¹⁸³

However, on September 6th, 2017, a notice concerning the provisional application of the Comprehensive Economic and Trade Agreement between Canada, on the one part, and the European Union and its Member States, on the other part, was published in the Official Journal of the European Union. It stated the Council's decision to enter the provisional application of CETA on September 21st, 2017, as arranged in its previous decision.¹⁸⁴

One of the fundamental characteristics of mixed bilateral agreements is that appeals to both individual member states and the EU as an entity is that it is not a prerequisite for either of them to define the specific delimitation of competencies between them. One could argue that the division of responsibilities within the EU is irrelevant in international law, but if the provisional applicability clause in a contract goes back to the parties' domestic law, either directly or indirectly, the division of competences becomes significant.¹⁸⁵

Regarding the inter-institutional disagreements on the scope of EU competences, sometimes the Council merely agrees with the Commission's recommended scope of provisional application. This might also happen if the Commission recommends the provisional application of the whole agreement, which is debatable for a mixed agreement in and of itself. The Council will usually qualify the provisional application by saying that it only applies to "components falling within the EU's competence". The Council, on the other hand, may choose a more limited scope than that proposed by the Commission, and proceed to a detailed description in its decision of the agreement's provisions that would be applied provisionally. The Council will do so in one of two ways: negatively or positively, or a combination of the two. These clauses should fall into one of two subgroups: first, matters that the member states of the Council believe (rightly or wrongly) they fall under exclusive member state competence. Nonetheless, two very identical provisions may be applied provisionally for one agreement but not for another agreement. A second set of provisions falls

¹⁸³ Op. cit. 182 Page 3 para. 7-9.

¹⁸⁴ Official Journal of the European Union. [online] Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017X0916\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017X0916(02)&from=EN) (last accessed on October 19th 2021)

¹⁸⁵ Chamon Merijin. European Journal of International Law. 4.B para1 [online] Available at: <https://academic.oup.com/ejil/article/31/3/883/5908084> (last accessed on October 19th 2021)

under EU shared or supporting competences; however, they are only implemented provisionally for political reasons. CETA is an example of this.¹⁸⁶

Some provisions are usually exempt from interim application, implying that they are subject to exclusive national jurisdiction. The criminal enforcement of intellectual property law is perhaps the best example. If they cannot be brought under Article 83(2) TFEU¹⁸⁷, such clauses appear to fall outside EU competence from a legal standpoint. Only insofar as it is required to guarantee the proper execution of harmonized EU rules, that clause provides for the introduction of minimum standards on criminal offenses and sanctions. The provisions of mixed agreements that give out certain protections for administrative and judicial proceedings that the Council normally excludes from provisional application could be deemed to fall under exclusive national jurisdiction. The CJEU Singapore Opinion, which ruled that the agreement's investor-state dispute settlement (ISDS) provisions did not fall within the EU's exclusive competence due to their impact on national jurisdictions, lends some credence to this. Notably, the Court did not reach this decision by concluding that this subject falls under exclusive national jurisdiction, but rather because the ISDS clauses could not be classified as supplementary.¹⁸⁸

Provisions for which the EU is unquestionably competent may still be excluded from temporary application for political reasons, notwithstanding the fact that the Council's decision on provisional application is often not motivated only by legal grounds. Provisions that are provisionally applied cannot be considered to come under EU competence a fortiori, given the Council's consistent practice of subjecting its decisions to a broad reservation, limiting the provisional application of specifically identified provisions "to the extent that they come under EU competence" or "to the extent that the EU covers matters for which the EU has acted internally." This is troublesome for EU partners not just in terms of legal certainty, but also because any reference in the agreement to the parties' internal law may impose on them an obligation to discover the precise internal division of responsibilities in the EU.¹⁸⁹

Finally, one must mention that the enforcement of CETA also affects the function of the EU regarding the entrance of a new member state to the Union. According to Article 30.10, any request by a country to join the European Union must be

¹⁸⁶ Op. cit. Chamon Merijin. *European Journal of International Law*. Part B1 para 1, 2, 4. [online] Available at: <https://academic.oup.com/ejil/article/31/3/883/5908084> (last accessed on October 19th 2021)

¹⁸⁷ Article 83(2) TFEU "If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76." [online] Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E083> (last accessed on November 15th 2021).

¹⁸⁸ Op. cit. Chamon Merijin. *European Journal of International Law*. Part 2 para 1, 2. [online] Available at: <https://academic.oup.com/ejil/article/31/3/883/5908084> (last accessed on October 19th 2021)

¹⁸⁹ Ibid Part B2 para 6

communicated to Canada by the European Union. During the negotiations between the European Union and the country seeking admission, the European Union will supply any information requested by Canada, to the degree practicable, on any topic covered by this Agreement, and consider any concerns raised by Canada. “The European Union shall notify Canada of the entry into effect of any accession to the European Union. Sufficiently in advance of the date of accession of a country to the European Union, the CETA Joint Committee shall examine any effects of the accession on this Agreement and shall decide on any necessary adjustment or transition measures.” By including a clause in its act of accession to the European Union, any new Member State of the European Union must consent to this Agreement as of the date of its accession to the European Union. “If the act of accession to the European Union does not provide for the automatic accession of the European Union Member State to this Agreement, the European Union Member State concerned shall accede to this Agreement by depositing an act of accession to this Agreement with the General Secretariat of the Council of the European Union and the Department of Foreign Affairs, Trade and Development of Canada, or their respective successors.”¹⁹⁰

¹⁹⁰ CETA text of the agreement. Article 30.10 [online] Available at: https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf (last accessed on October 19th 2021)

CHAPTER 4. THE BENEFITS AND COSTS EXPECTED FROM CETA

The focus of the agreement between Canada and the EU is to boost bilateral trade and investment flows while contributing to fostering economic growth and job creation as well. This is in accordance with the Europe 2020 strategy, which aims to enhance growth through external competitiveness and participation in open and fair markets around the world while safeguarding our authority to regulate in order to achieve legitimate public policy goals.¹⁹¹

4.1 Benefits proclaimed by the EU

CETA has the potential to help Europe thrive and create better-paying employment. Independent analyses show that CETA may increase investment and trade by more than 55 percent for commodities and 40 percent for services. Furthermore, every €1 billion in EU exports supports 14,000 employments on average. And jobs that rely on exports tend to pay better than positions that don't, up to 15% more for higher-skilled jobs. It also creates a level playing field for both large and small European businesses. Businesses in Canada and the EU will now be able to compete on a level playing field as a result of CETA. This will open a slew of new prospects for EU firms in the Canadian market, particularly for smaller firms with fewer than 250 employees, which represent 99 percent of all firms in Europe. As part of CETA, Canada pledged to provide better business conditions for EU companies than it does for companies from other countries.¹⁹²

Furthermore, consumers across Europe will gain directly from CETA, as soon as its implementation starts. This is since it will eliminate or reduce practically all the customs tariffs that EU importers must pay on Canadian goods. This should result in lower costs for businesses for the inputs they require to manufacture their final products, as well as reduced prices and a greater range of goods and services for EU consumers. In addition, businesses across Europe will save money as a result of CETA. CETA's reductions in customs taxes could save European exporters hundreds of millions of euros each year. Importers in Europe will gain as well, as the cost of parts, components, and other inputs used in the manufacturing of their products decreases. This will open a lot of doors for European businesses, especially smaller ones, allowing them to expand and recruit more people.¹⁹³

However, the decrease of costs for companies does not mean decrease of quality assurance. Through the so-called conformity assessment certificates, CETA would help EU enterprises that export to Canada, particularly smaller ones, decrease expenses. These documents show that a product has been tested and meets the requirements of necessary technical rules and regulations as well as any other

¹⁹¹ The economic impact of the comprehensive economic and trade agreement. Page 9 last paragraph [online] Available at: https://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156043.pdf (last accessed on October 19th 2021)

¹⁹² The benefits of CETA. Page 2 para 1,2. [online] Available at: https://trade.ec.europa.eu/doclib/docs/2016/july/tradoc_154775.pdf (last accessed on October 19th 2021)

¹⁹³ Ibid. Page 4 para 3,4.

applicable health, safety, consumer protection, or even environmental standards. The EU and Canada have agreed to recognize each other's conformity assessment certificates for a wide range of products, from electrical goods to toys, as part of CETA. As an example, an EU company that wants to sell a toy in Canada will only need to have it tested once, in Europe, where it may already receive a certificate that is valid in Canada, saving time and money for the company. In addition, the agreement creates opportunities for EU companies to provide services in Canada. Three-quarters of Europe's economy is composed of services and in several service industries, EU enterprises are world leaders. They will soon have additional chances and improved circumstances to do business in Canada, as a result of CETA, in fields such as: telecommunications, banking, professional services, such as accounting and engineering, environmental services, including wastewater treatment, container shipping and dredging.¹⁹⁴

EU enterprises now have a better chance of competing for Canadian government contracts as a result of CETA. Every year, the federal government, provinces, and municipalities of Canada spend about €30 billion on goods and services from private enterprises. They award public contracts or tenders, which are then bid on by businesses. Canada will now award more of these tenders to EU firms than to firms from any of its other trading partners. Many more public tenders will be available for EU enterprises to compete on, including those issued by the federal government, the provinces of Canada, and Canadian cities and municipalities. Many of the areas covered by these tenders, such as the construction or upgrade of highways, ports, and other infrastructure, are extremely competitive. Furthermore, provincial governments in Canada spend twice as much on goods and services than the federal government itself. And, thanks to CETA, EU companies will be allowed to compete for them. Canada has also promised to facilitate the access to its public contracts by publishing the contracts online in one place, following the practice of the EU.¹⁹⁵

CETA will benefit food and beverage manufacturers all over Europe, many of whom are in tiny rural towns. This is because Canada has agreed to preserve over 140 geographical indications (GIs) in Europe. These are the names of high-quality food and beverage products that are tied to the regions in which they are produced. They assist local producers in a more successful marketing of their products; and on emphasizing their unique character, quality, and legacy. Thousands of GI products are produced in Europe, but only a few are exported. The European Union's purpose is to protect these from imposters. CETA will include a wide range of items, including Roquefort and Gouda cheeses from France and the Netherlands, as well as Italian Prosciutto di Parma ham. It will ensure that only authentic products may be sold under those names in Canada. It will also strengthen border checks to prevent fraudulent food and drink goods from being sold in Canada under the guise of being from a specific EU region.¹⁹⁶

Nonetheless, CETA will aid in ensuring that innovative businesses, musicians, and others in the fine arts industry are adequately compensated for their labour. Canada will do more to preserve its research and creativity, generally known as intellectual property, by aligning its rules with those of the European Union in areas such as

¹⁹⁴ Op. Cit 196. Page 6 para 5,6.

¹⁹⁵ Op. Cit 196. Page 8 para 7.

¹⁹⁶ Op. Cit 196. Page 8 para 8.

patents, designs, and copyright, and by enforcing those rules more vigorously. Canada will also substantially improve border inspections to prevent false (counterfeit) and pirated goods. In addition, CETA will stimulate more job-creating investment in Europe, through facilitating Canadian companies to temporarily relocate important personnel to the EU. Canadian businesses have previously made significant investments in the EU, totalling €14 billion in 2014. This contributes to the creation of jobs and economic prosperity. When companies decide to open a firm in Europe, they frequently need to send important personnel over, such as top executives or technical specialists, to assist with the start-up. Of course, the same is true for EU companies establishing themselves in Canada. CETA will also make it simpler for them to move important personnel to Canada on a temporary basis. As a result, EU businesses will be able to expand.¹⁹⁷

Furthermore, the agreement facilitates the recognition of professional qualifications of citizens of either Parties in the premises of the other Party. Now, Europeans working in regulated professions such as architecture, accounting, and engineering are unable to practice in Canada since their credentials are not recognized. The same holds for Canadians who desire to practice medicine in the EU. CETA has the potential to change that. Both the EU and Canada have organizations that represent the respective professions, and CETA provides a framework for them to negotiate agreements that recognize each other's credentials. The governments of Canada and the EU will then take up these accords and make them legally binding. Lastly, it is important to mention that through CETA, the EU and Canada have restated their previous agreements to uphold international norms protecting workers' rights and the environment and have assured each other that they would not retreat. Business associations, trade unions, environmental groups, and other non-governmental organizations (NGOs) in both the EU and Canada play a significant role in putting these pledges into practice under CETA.¹⁹⁸

4.2 Benefits proclaimed by Canada

For Canada small and medium-sized firms (SMEs), which account for 90% of all private sector jobs in Canada, CETA will provide high-quality jobs and contribute to the country's economic growth. Both Canada and the EU have taken initiatives to enable that SMEs participate better in international trade and regional supply chains under CETA. CETA benefits SMEs in both Canada and the EU by boosting their ability to participate in, and benefit from, the agreements and international trade possibilities.¹⁹⁹

SMEs will benefit from the elimination of tariffs on 98 percent of current Canadian exports to the EU, as well as improved access for service providers. The agreement increases competitiveness. Taking Canadian products or services to the EU will become less expensive, with lower or no tariffs. Approximately 99 percent of the

¹⁹⁷ Op. Cit 196. Page 10,12 para 9,11.

¹⁹⁸ Op. Cit 196. Page 10,12 para 10,12.

¹⁹⁹ Learn about CETA benefits for businesses. Para 1 [online] Available at: https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/ceta_benefits_business-avantages_aecg_entreprises.aspx?lang=eng (last accessed on October 19th 2021)

EU's tariff lines will be duty-free once CETA is completely implemented. CETA facilitates access to new consumers by making it easier for Canadian SMEs to sell to EU customers, including foreign governments. Under the terms of the agreement, Canadian businesses will be able to compete for opportunities at all levels of the EU government procurement market, which is worth an estimated \$3.3 trillion per year.²⁰⁰

Canada enjoys the same benefits mentioned in section 4.1, as the goal of the agreement is to address the Parties as equal. The estimated impact of CETA for both Parties will be described in the following paragraphs.

The agreement aims to reduce, and eventually remove, practically all tariffs. That is the greatest evident effect of CETA. Only 25% of EU tariff lines on Canadian goods are currently duty-free. When CETA takes full effect, 98 percent of EU tariff lines will become duty-free for Canadian-origin goods, with the remaining one percent phased out over three, five, or seven years. One of the sectors mostly affected by this fact is trade. CETA takes a "negative list" approach to service liberalization. Except for those expressly excluded in a list of reservations, all service sectors shall benefit from non-discriminatory treatment and market access. Health care, public education systems, and other social services are among the essential services that are not yet covered. CETA grants Canadian financial services firms in the EU stronger market access possibilities, which should help Canada's globally competitive financial services corporations. It also includes various safeguards for financial investors as well as a unique dispute resolution process. Following the approval of these measures by the parliaments of EU member nations, investors in the financial industry will have recourse for breaches of investor treatment obligations in addition to expropriation and transfer limits.²⁰¹ As of October 2019, 13 Member States had notified the European Council of completion of national ratification procedures for CETA; these Member States are Austria, Croatia, Czechia, Denmark, Estonia, Finland, Latvia, Lithuania, Malta, Portugal, Spain, Sweden, and the United Kingdom.²⁰²

Furthermore, CETA ensures the protection of the investments. This means that Canada and the EU are large investors in one another, with \$210 billion in Canadian investment in the EU and \$242 billion in EU investment in Canada in 2015. CETA provides customary guarantees forbidding expropriation without "prompt, appropriate, and effective" compensation, as well as requiring fair and equitable treatment of investors from both parties. CETA will ensure that investors receive both "national treatment" and "most-favoured-nation treatment", meaning that they will not be treated less favourably than domestic investors or foreign investors.²⁰³

The Investment Canada Act ("ICA") retains Canada's capacity to examine substantial foreign investments under CETA. For EU parties purchasing or disposing of control of a Canadian corporation, the net benefit review threshold under the ICA will be raised from \$600 million to \$1.5 billion in enterprise value. The higher barrier will not apply to investments made by state-owned corporations or investments made in

²⁰⁰ Ibid. Para Dots 1,2,8,9.

²⁰¹ Kim, Glossop, & Dattu, 2017. Para "Tariff Elimination for Trade in Goods" and "Broad Services Trade Liberalization" [online] Available at: <https://www.osler.com/en/resources/cross-border/2017/the-canada-europe-free-trade-agreement-advantages> (last accessed on October 19th 2021)

²⁰² Legislative Train Schedule. Para 8. [online] Available at: <https://www.europarl.europa.eu/legislative-train/theme-a-balanced-and-progressive-trade-policy-to-harness-globalisation/file-ceta> (last accessed on November 15th 2021)

²⁰³ Ibid. para. "Investment protection".

cultural businesses in Canada. The increased barrier would also benefit EU businesses controlled by nationals from Canada's existing Free Trade Agreement partners (such as the United States, Mexico, and South Korea).²⁰⁴

4.3 Concerns of macroeconomic nature

Cost-cutting and competitiveness-enhancing actions generated by CETA have negative long-term repercussions, according to a realistic liberalization scenario reflecting a "new generation" trade deal aiming to decrease "trade costs and more". Despite improving external balances in Canada and some EU member states, there is a concern that demand shortfalls due to intra-EU trade diversion, as well as lower labor costs (and income), tax revenue, and government spending, will create uncertainty, encouraging households to increase precautionary savings and businesses to postpone investment as future sales prospects deteriorate.²⁰⁵

By 2023, 227 thousand employment positions would be lost in CETA nations, 204 thousand in the EU, and 80 thousand more in the rest of the world countries, further reducing the labor income share, which is already dropping. Slower wage increases will transfer a larger percentage of national revenue from labor to capital owners in the long run. In addition, by 2023, the share of national income attributable to capital in Canada and the EU will have increased by 1.76 percent and 0.66 percent, respectively. As a result, employees in Canada will lose an average yearly wage of €1776, while in the EU, workers will lose between €316 and €1331 depending on the country. In Canada and the EU, aggregate demand deficits fueled by greater unemployment will damage productivity and result in cumulative welfare losses of 0.96 percent and 0.49 percent of national income, respectively. In addition to harming GDP, CETA's effects would exacerbate rising inequality and social tensions in an already complicated and unpredictable political environment.²⁰⁶

The first conclusion from the above information is that quantitative studies that are oblivious to established hazards associated with complete liberalization are insufficient to advise policymakers about CETA's economic ramifications. Alternative modelling tools are needed to provide useful insights into the anticipated repercussions of CETA. These models must identify the risks of trade liberalization and quantify their impact. The second is that increasing exports to replace local demand is not a long-term growth plan for Canada or the EU. According to Kohler & Storm, improving competitiveness by cutting labour costs will only harm the economy under the current austerity conditions of high unemployment and low growth. If policymakers adopt CETA and continue down this path, they will soon be left with only one option for reviving demand in the face of rising social tensions: increase private lending, possibly through renewed financial deregulation, potentially resulting in unsustainable debt and financial instability. Rather than repeating past mistakes, policymakers should seek ways to encourage economic activity through

²⁰⁴ Ibid. para. "Increased Investment Review Threshold"

²⁰⁵ Kohler & Storm, 2016. CETA Without Blinders. Page 29 para 1st of conclusion. [online] Available at: https://www.epsu.org/sites/default/files/article/files/GDAE%2016-03%20CETA%20Without%20Blinders_Working%20Paper.pdf (last accessed on October 19th 2021)

²⁰⁶ Ibid last paragraph of page 29 and page 30 para1.

coordinated and long-term support of labour income, as well as strategies to begin a much-needed socio-ecological shift.²⁰⁷

MEP Anna-Michele Asimakopoulou, however, is of the opinion that CETA will enhance trade and investment flows for both Parties, benefiting European businesses, SMEs and consumers across Europe. This opinion is based on the analysis of CETA, which shows an estimated increase of 21% of exports from Canada to the EU and of 27% of imports from Canada to the EU respectively, between 2016 and 2019, with an additional rise of 25% of the trade value during 2021. In addition, CETA protects the Geographical Indication in EU trade, which benefits small businesses across the EU, as it prohibits imitations and facilitates customs clearance in the importing country, which results to facilitating trade. Hence, MEP Asimakopoulou, is positive that the combination of the elimination of 99% of the tariff lines, the protection of 145 European Geographical Indications, the increasing access of EU companies to the Canadian services market, and the protection of property rights in a global setting, will resume to a clear benefit in the macroeconomic status of the EU.²⁰⁸

4.4 Concerns of the negative distributive impact of trade

liberalization

In one of his articles for the Centre for European Policy Studies (CEPS) regarding CETA, Professor Paul De Grauwe of London School of Economics states that although he has been an advocate for free trade throughout his academic career, it seems to him that globalization “is reaching its limits”. (De Grauwe, 2016)²⁰⁹

One of the disadvantages of globalisation is the unequal distribution of its costs and rewards. There are winners and losers in free trade. The hundreds of millions who used to live in extreme poverty conditions are the main beneficiaries, but there are also many winners in developed countries, such as individuals who work for or own shares in exporting enterprises. There are, however, many losers. The losers are the millions of people who have lost their jobs or seen their earnings decrease, especially in industrialized countries. These people must be convinced that free trade will benefit them and their children in the end. If they are not convinced, the social consensus in favour of free trade and globalisation that has existed in the industrialised countries would disintegrate further. (De Grauwe, 2016)²¹⁰

The reinforced redistributive policies, which convey money from the beneficiaries to those less benefited, are considered the most effective of ways. However, the beneficiaries tend to use their capacity of influencing the political process in order to prevent the application of such policies. For example, in fact, most developed

²⁰⁷ Ibid Page 30 para 2,3.

²⁰⁸ MEP A.M. Asimakopoulou, communication via email, October 25, 2021. Appendix 1st question.

²⁰⁹ De Grauwe, 2016. How far should we push globalisation? Para. 6,7 [online] Available at: <https://www.ceps.eu/ceps-publications/how-far-should-we-push-globalisation/> (last accessed on October 19th 2021)

²¹⁰ Ibid para 9

countries have reduced redistributive policies since the beginning of the 1980s, when globalisation became more intense. States achieved the reduction in two manners. First, governments reduced the top tax rates in personal income tax systems. Second, by decreasing unemployment benefits, job security, and minimum salaries, they have damaged the social security institutions. These decisions were justified in the name of structural changes, and the European authorities actively promoted them. As a result, while globalisation accelerated, developed countries weakened the redistributive and protective mechanisms that had previously been in place to assist individuals affected by unfavourable market forces. It's no wonder that these reactionary measures have spawned a slew of anti-globalisation foes who are now turning on the policymakers who set them in motion.²¹¹

CHAPTER 5. THE CRITICISM AGAINST CETA

5.1 Reactions of States

A few months prior to the meeting for the signature of the agreement, a few member states of the EU were still in the process of internal evaluation of the treaty, in order to decide whether to approve the agreement or not. The Constitutional Court of Germany was still examining the legality of the provisional application of CETA, leaving Germany and Austria in the waiting. (Patterson, 2016)²¹² Food watch, Mehr Demokratie, and Campact, among other anti-CETA groups, moved to Germany's Constitutional Court to dispute the deal's preliminary implementation. However, on October 13th, 2016, the Court in Karlsruhe ruled that the deal's provisional application is compatible with the Constitution of Germany. The Court attempted to resolve the issues raised by CETA by declaring that Germany is free to sign the agreement, though on the condition that Berlin can opt to withdraw, in the case of a later court decision that falls in Berlin's favour.²¹³

In the same tone, then French Secretary of State for Foreign Trade, Matthias Fekl, stated "France promised that its parliament would have the last word. So French MPs will have to vote on whether to ratify CETA. This is a fundamental principle to ensure that European citizens are democratically involved in the trade policies carried out in their name". The president of the International Association of Technicians, Experts and Researchers (Aitec), Amélie Cannone, commented that "When faced with a crisis in Europe, the member states claw back powers instead of trying to improve the EU's trade policy". Then she brought the example of the EU-Colombia/Peru free trade agreement, which the Parliament of France ratified three years after its adoption at EU

²¹¹ Ibid para 10

²¹² Patterson, 2016. SIX EUROPEAN UNION MEMBER STATES STILL UNDECIDED ON CETA. Para 1 [online] Available at: <https://canadians.org/analysis/six-european-union-member-states-still-undecided-ceta> (last accessed on October 19th 2021)

²¹³ Zeiher, 2016. Germany free to sign CETA after top court rejects case. Para 2,3,6 [online] Available at: <https://www.euractiv.com/section/trade-society/news/germany-free-to-sign-ceta-after-top-court-rejects-case/> (last accessed on October 19th 2021)

level. According to Cécile Babriole, the French Parliament often conducts the ratification process of the treaties discretely behind closed doors.²¹⁴

In the meantime, Bulgaria and Slovenia, although they are in favour of the text of the agreement, made the decision to use CETA as an opportunity to resolve their issue with Canada in regard to their visas. Citizens of all EU member states can enter Canada without the prerequisite of a visa, except for the citizens of Romania and Bulgaria. On December 20th, 2016, a new regulation was adopted, which dictated that EU member states must share a common approach in relation to visa matters, the more so in the cases that EU citizens are subjected to different treatment. Bulgaria has agreed to a phased removal of the visa requirement, whilst Romania has demanded a full exemption beginning in 2017. In order to resolve the matter, Canada, the European Commission, Bulgaria, and Romania have held meetings in various formats. However, following an unusual meeting of the General Affairs Council's trade segment held in Luxembourg on October 18th 2016, it became evident that Bulgaria and Romania both sought formal assurances from Canada that the visa problem would be resolved before they removed their veto. (Gotev, 2016)²¹⁵ In December 2016, the Canadian Minister of Immigration declared that Bulgarian and Romanian citizens would no longer require the possession of a visa to enter Canadian territory as of December 1, 2017. Canada would also enforce a partial lift, exempting some Romanian and Bulgarian citizens by May 1, 2017.²¹⁶

The Kingdom of Belgium also had its oppositions against CETA, which will be explained in the following section.

5.2 The Belgian Wallon Region veto

On October 14th, 2016, the Minister-President of Belgium's francophone region Wallonia, Paul Magnette, refused to give the approval of his government to the federal Belgian government, in order for the latter to sign the landmark Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada. As a result, during its meeting on October 18th, the Trade Council was unable to accept the resolution to sign and temporarily apply the agreement, preventing the EU from signing it the following week at the EU-Canada Summit in Brussels. While opponents of CETA applauded Mr Magnette's obstinacy, the European Commission and all member states, including the federal Belgian and Flemish governments, were deeply disappointed. The veto, however, not only exemplifies Belgium's complex – and at times bizarre – federal structure, but it also

²¹⁴ Barbière, 2016. Member states claw back control over CETA. Para 8,17,21,19. [online] Available at: <https://www.euractiv.com/section/trade-society/news/member-states-claw-back-control-over-ceta/> (last accessed on October 19th 2021)

²¹⁵ Gotev, 2016. Bulgaria and Romania maintain reservations on CETA. Para. 2,3,5,4. [online] Available at: <https://www.euractiv.com/section/trade-society/news/bulgaria-and-romania-maintain-reservations-on-ceta/> (last accessed on October 19th 2021)

²¹⁶ Visa restrictions to be lifted for Bulgarian and Romanian citizens from 1 December 2017. Para 1,2 [online] Available at: <https://www.celiaalliance.com/index.php?q=visa-restrictions-to-be-lifted-for-bulgarian-and-romanian-citizens-from-1-december-2017.html> (last accessed on October 19th 2021)

highlights a far more basic problem at the EU level, casting doubt on the bloc's capacity to reach any ambitious trade agreement.²¹⁷

In order to sign a trade deal, Belgium's constitutional structure requires that all five regional governments provide their permission to the federal government. Apart from increasing competition for Walloon farmers, the socialist minister-president noted the anti-CETA camp's well-known concerns, such as the investor-state dispute settlement (ISDS) mechanism and the potential harmful impact on EU food safety, social, and environmental standards. Domestic political forces had a significant impact as well. The centre-left francophone opposition parties at the federal level, which control the two regional governments in Wallonia, for example, were the ones that prevented the centre-right federal government from signing CETA.²¹⁸

On October 27, 2016, the Kingdom of Belgium concluded an internal agreement over the signing of the EU-Canada Comprehensive Economic and Trade Agreement between the Federal Government and the governments of the federated states concerned (CETA). This agreement includes a national unilateral declaration regarding Belgian conditions for signing CETA, as well as an undertaking to seek an opinion from the CJEU on the compatibility of certain aspects of CETA with European Treaties, specifically Opinion 2/15. The CJEU issued Opinion 2/15 on the EU-Singapore free trade agreement on May 16th, 2017. According to Opinion 2/15, the EU does not have exclusive jurisdiction over hearing disputes between investors and governments. Furthermore, the CJEU confirmed that Opinion 2/15 only addresses the issue of competence, not the question of whether a mechanism for hearing investor-state disputes is compatible with the European Treaties.²¹⁹

As a result, the Kingdom of Belgium petitioned the CJEU for a judgment on the consistency of Chapter 8 ("Investments"), Section F ("Resolution of investment disputes between investors and states"), with the European Treaties, including basic rights. The ICS, which would consist of a Tribunal and an Appeals Body, is a new, revised system for considering disputes between investors and states. The Kingdom of Belgium had specifically asked the CJEU to render a judgement on the ICS's compatibility with key elements of the Treaties.

1. The CJEU's only authority to deliver authoritative interpretations of European Union law.
2. The European Union's "practical effect" criteria and the basic concept of equality. The right to appear in court.
3. The right to an impartial and independent judiciary. "Regarding the right to an independent and impartial judiciary, the Kingdom of Belgium wishes to obtain an opinion regarding the following aspects: the conditions regarding the remuneration of the members of the Tribunal and the Appeals Body. The appointment of members of the Tribunal and the Appeals Body. The release of members of the Tribunal and the Appeals Body.

²¹⁷ (Van der Loo & Pelkmans, 2016). Para 1,2. [online] Available at: <https://www.ceps.eu/ceps-publications/does-wallonias-veto-ceta-spell-beginning-end-eu-trade-policy/> (last accessed on October 19th 2021)

²¹⁸ Ibid para 3.

²¹⁹ BELGIAN REQUEST FOR AN OPINION FROM THE EUROPEAN COURT OF JUSTICE. Page 1 para 1-3. [online] Available at: https://diplomatie.belgium.be/sites/default/files/downloads/ceta_summary.pdf (last accessed on October 19th 2021)

4. The guidelines of the International Bar Association regarding conflicts of interest in international arbitration and the introduction of a code of conduct for the members of the Tribunal and the Appeals Body.
5. The external professional activities related to investment disputes of members of the Tribunal and the Appeals Body.”²²⁰

In its official statement for the request, the Kingdom of Belgium recognizes that important parts of CETA’s development, particularly the ICS, must yet be resolved by the Council of the European Union based on a proposal by the European Commission. This additional clarification may have an impact on the regulatory framework for which the CJEU is being asked to provide advice in this opinion request. The Kingdom of Belgium is also aware that the ICS is the first step toward the establishment of a multilateral Investment Court, which, in the long term, will serve as the responsible judicial organization for resolving investor-state controversies. The elements of CETA which are the main topic of a specific Belgian request regarding an opinion from the CJEU are excluded from the Treaty’s temporary implementation. The provisions in question would only take effect once CETA has been adopted by all member states in accordance with their national constitutional procedures.²²¹

However, on October 28th, 2016, the final hurdle in the way of the EU and Canada finalizing a bilateral trade and investment agreement (CETA) was eliminated. After hours of negotiations, the parliament of Belgium’s French-speaking Wallonia withdrew its opposition. Individual leaders of the country’s five regions and language communities have developed a single text to address their worries about agricultural imports and the contentious arbitration system between nations and investors. According to leaders of the German-speaking Community in Belgium, progress on agricultural items was achieved, but no further information was provided. Many people are opposed to arbitration because it allows multinational investors to sue national governments if they believe public policy is harming them. The trial is divided among distinct Chambers rather than being assigned to national courts. To placate the protests, the EU succeeded in having judges nominated by the government, even though many people believe this is not an appropriate definition of transparency and independence. In Brussels, the positive developments after the easing of the gridlock in Belgium were applauded. European officials expressed concern about the impact of a failure to reach an agreement on CETA on the EU’s trade agenda. Finally, it should be noted that Canada is attempting to lessen its reliance on the United States as a host country for a substantial portion of its exports through CETA.²²²

Following this complication of the signing of the agreement, sixty academics from fifteen European countries joined forces and launched an initiative (the so-called *Trading Together*) to defend the European trade policy. According to the academics, the EU’s ability to engage successfully in international trade negotiations has been jeopardized by the issues surrounding the signing of the EU’s comprehensive economic and trade agreement with Canada (CETA). The scholarly group emphasizes the importance of the European Parliament in particular. In international commerce,

²²⁰ Ibid Page1 para 3, Page2 para 1,2.

²²¹ Ibid Page 2 para 4, page 3 para 1,2.

²²² Το «όχι» των Βαλλόνων έγινε τελικά «ναι». Para 1,2,4. [online] Translated from Greek. Available At: <https://www.kathimerini.gr/economy/international/881162/to-ochi-ton-vallonon-egine-telika-nai/> (last accessed on October 19th 2021)

the Lisbon Treaty has given the legislative body more power. “The European Parliament has made meaningful contributions in this field. It has shown that, if necessary, it will not hesitate to reject the ratification of international agreements, when fundamental rights are at issue,” the experts claim, noting the 2012 ACTA – the Anti-Counterfeiting Trade Agreement – as an example. In addition, they believe that in case of dispute between the Parties, “the recourse to national and European competent courts should be favoured”.²²³

5.3 The Investor-State dispute mechanism

The investment regulations of CETA also include access to an investor-state dispute resolution (“ISDS”) mechanism, which allows foreign investors to assert their rights in an independent international arbitration procedure against the investment’s host state. In February 2016, the draft ISDS mechanism’s ad hoc arbitration system was replaced with a permanent and institutionalized investment arbitration court structure.²²⁴

Indeed, Chapter 8 of CETA differs from more traditional ad hoc arbitration, which is typically conducted under the rules of the International Centre for Settlement of Investment Disputes (“ICSID”) or the United Nations Commission on International Trade Law (“UNCITRAL”), as provided in Chapter Eleven of the North American Free Trade Agreement (“NAFTA”) or Chapter Nine of the Trans-Pacific Partnership (“TPP”). While the CETA’s declared, investor protections are identical to those in NAFTA, the TPP, and thousands of other bilateral investment treaties, the ISDS provisions are a significant departure from all previous investment protection policies. The CETA establishes a fifteen-member tribunal, with five members selected by the EU and Canada and five by third-party governments. Members of the tribunal must have “demonstrated expertise in public international law” and are designated for a five-year term that can be renewed once. In a typical arbitration panel, one arbitrator is appointed by the investor, another by the respondent state, and the chairperson by mutual agreement of the two. What differentiates CETA is that the panel members are appointed solely by the governments, and the reappointment of individual tribunal members is in the discretion of the governments. This differentiation has led to the opposition of the investors towards ISDS, the reason being that according to Chapter 8, the investors lose their right to appoint one of the tribunal members as well as the mutual right to appoint the chairperson. Furthermore, they fear that in some cases, the tribunal members, whose appointment and reappointment is in the hands of the

²²³ After Wallonia’s veto on CETA, 60 academics defend EU democracy in trade. [online] Available at: <https://www.euractiv.com/section/trade-society/news/beyond-the-wallonian-ceta-veto-60-academics-defend-eu-democracy-in-trade/> (last accessed on October 19th 2021)

²²⁴ Kim, Glossop, & Dattu, 2017. Para “Investment Arbitration Court System” [online] Available at: <https://www.osler.com/en/resources/cross-> (last accessed on October 19th 2021)

governments, will show favouritism towards the hosting Party, against foreign investors.²²⁵

Another significant reform in CETA is the creation of an appellate tribunal with an as-yet unspecified number of members. This contrasts with ICSID regulations, which only allow for a very limited review by the ICSID Annulment Committee and a similarly limited review of ICSID Additional Facility and UNCITRAL verdicts by courts in the arbitration's "seat". In comparison to its model, the Appellate Body of the World Trade Organization, the CETA appellate body has jurisdiction over not only "errors in the application or interpretation of applicable law", but also over "manifest errors in the appreciation of the facts". David Ganz believes that the ability of the appellate body to review both facts and applicable law is concerning. This authorisation could effectively provide the foundation for de novo review of investment court verdicts, and in any case, could add time and expense to the resolution of investment disputes presented to the investment court rather than regular investment arbitration.²²⁶

Gus Van Harten, associate professor of law at the Osgoode Hall Law School in Toronto, who has been a professional on ISDS for fifteen years, explained the reasons ISDS failed in an interview with Euractiv. According to Professor Van Harten, the major historical reason for these treaties falls away in the context of a treaty between two countries with mature and dependable courts systems, because the objective was to use arbitration to replace courts systems where they were deemed to be unreliable. It goes a step farther. Since arbitrators lack the institutional safeguards of independent judges, courts in the United States and Canada are more independent than the arbitration process itself. They do, in fact, have economic and financial career interests that stain the decisions they make. As a result, substituting a less impartial international arbitration process to domestic courts is illogical. It would seem rational to establish an international judicial process, such as an international court. Allowing a private actor to sue a country is uncommon in international law, yet it is not unprecedented in Europe, in cases presented at the European Court of Human Rights and the European Court of Justice. In addition, an international court plays a role in plenty of other circumstances. The case is not given to an arbitration process that lacks those characteristics, such as judicial independence and procedural fairness.²²⁷

Professor Van Harten also states that arbitration is profitable in a way that a judicial procedure is not. The legal sector has its own interests. Arbitrators have also the potential to operate as lawyers in the domain. This is completely unethical, as in the case a judge represents a paying client on one side, yet the same legal issues emerge in multiple instances, it is reasonable to assume that the judge will interpret the law in a way that benefits paying clients. It makes no difference whether this is true or not. If there are grounds to believe such a conflict of interest, this represents a violation of

²²⁵ Gantz, 2017. The CETA Ratification Saga. Page 4 para 2,3; Page 5 para 1. [online] Available at: <https://poseidon01.ssrn.com/delivery.php?ID=420125003002076013090001083073124092096020034023025001122072006066081016031115002071005059060034023051016026096099120001071011046078006069052028073095008076020108021001016105084071122006020020079119110101087120028124018123079093127071028103112078127&EXT=pdf&INDEX=TRUE> (last accessed on October 19th 2021)

²²⁶ Ibid page 5 para 2.

²²⁷ Vincenti Daniela. Analyst: ISDS model is Australia, not Canada. 6,8-11 [online] Available at: <https://www.euractiv.com/section/trade-society/interview/analyst-isds-model-is-australia-not-canada/> (last accessed on October 19th 2021)

judicial independence. TTIP, along with a few other treaties, represents a significant advance in the breadth of these arbitrators' power, which extends beyond the reach of any court. Existing treaties, for example, cover about 15-20 percent of investment flows, but TTIP alone may cover 50-60 percent. We have a convention that only protects foreign investors, and it lacks the same sort of balanced language as the ECHR, for example, to safeguard the ability to regulate. This system enables arbitrators to overturn any state decision, including parliamentary decisions, and to determine how much public money should be paid as a result of a previous legislative decision. The lack of predictability around the final ruling of the arbitrators creates legal ambiguity and financial concerns. Several of these cases might be worth billions of dollars.²²⁸

Through his academic work over the years, Professor Van Harten has expressed his desire for the creation of an international court, based on his belief that opting for an arbitration instead of creating a judicial procedure was a political decision. The European Commission did not manage to achieve the procedural fairness and judicial independence it once proclaimed. Van Harten suggests that the three main factors for this failure are the judicial process itself, the relationship of the Commission with the national judiciaries, and the imbalance in the application of investors' rights. According to him, investors and States should appeal to the local judiciary, exhausting all local remedies, and resort to arbitration only in case of proven misjudgement. The third factor touches the right of the Member States to regulate the decisions made by the EU, which is applied to many chapters of agreements, including CETA, except for the chapter regarding investors. This creates an imbalance, as the investor rights and protections are very elaborate, yet without the guarantee of a clear and expressed affirmation of the states. "CETA [...] does not deliver any of this, except for mostly the issue of openness, which is only one part of having a judicial process".²²⁹

According to Professor Van Harten, the ISDS model was created in Washington and major EU capitals. It resembles a global supreme court that consists of unknown judges, whose sole purpose is to protect foreign investors. Canada is the sole western state who agreed with such an arbitration mechanism in the NAFTA treaty, and Professor Van Harten suspects that the State will continue to conclude other treaties that include ISDS, wrapping the Canadian economy with this type of dispute resolutions. The professor disagrees with resolving issues through arbitration mechanisms and suggests following the lead of the treaty between Australia and the United States of America. If a dispute arises under the treaty, a state-to-state dispute resolution mechanism, like the WTO, is in place. Investors are also protected by domestic courts, and there is another option in the form of contracts. Any major investment project is associated with a contract, and those contracts have their own dispute resolution sections that can provide for the same arbitration system on a contract-by-contract basis. Hence, the ability to negotiate provides control to the government over the issue. Finally, he stated that if Australia managed to do so, the EU could achieve the same result in its trade agreements.²³⁰

²²⁸ Ibid Para 14-18, 20-22.

²²⁹ Ibid para 32,35, 38-41. Investment Protection, The multilateral investment Court. [online] Available at: https://ec.europa.eu/commission/presscorner/detail/lt/IP_16_399 (last accessed on October 19th 2021)

²³⁰ Ibid para 44, 50, 53, 54, 56, 59, 40, 42.

5.4 The compatibility of the Investment Court System with EU law

In 2016, the European Commission and the Canadian Government decided to “include a new approach on investment protection and investment dispute settlement in the EU-Canada Comprehensive Economic and Trade Agreement (CETA)” which “shows the commitment to work together to establish a multilateral investment tribunal.” According to the Commission the entirety of the fundamental features of the EU's new approach to investment, as detailed in the EU's TTIP proposal from November 2015 and contained in the (then recently negotiated) EU-Vietnam free trade agreement, have been included in the finalised CETA text following the legal amendment of the text. According to the announcement of the Commission, the revised CETA ensures the maintenance of the right to regulate for public policies, yet the investment protection provisions are not to be regarded as government commitments. The European Union and Canada both wish to establish a permanent multinational investment court and the charter of CETA acknowledges that such a multilateral system will eventually supplant the bilateral mechanism established in CETA.²³¹

As mentioned in Chapter 5.2, Belgium filed a petition for the opinion of the CJEU, on whether the ICS system was compatible with EU law. On April 30th, 2019, the CJEU released a press release in which it stated, “The mechanism for the resolution of disputes between investors and States provided for by the free trade agreement between the EU and Canada (CETA) is compatible with EU law”. In the ruling of the CJEU is stated “an international agreement providing for the creation of a court responsible for the interpretation of its provisions and whose decisions are binding on the EU, is, in principle, compatible with EU law.” In addition, CETA does not deprive the EU institutions of their autonomy, as their conditions to maintain their essential character are met by the agreement. Furthermore, EU law does not preclude the creation of a judicial system, incorporated in the agreement, which intends to ensure that CETA abides with EU law. However, given that these tribunals are not part of the judicial system of the EU, “they cannot have the power to interpret or apply provisions of EU law other than those of the CETA or to make decisions which might have the effect of preventing the EU institutions from operating in the way that the EU constitutional framework requires”.²³²

In addition, in case of a dispute between an investor and a Member State, the CJEU decided to grant the EU the responsibility of the decision of whether the dispute should be brought against that Member State involved or against the EU. “The exclusive jurisdiction of the Court to give rulings on the division of powers between the EU and its Member States is thereby preserved”. The CJEU also concluded that the mechanism for the settlement of disputes is compatible with the right of access to

²³¹ CETA: EU and Canada agree on new approach on investment in trade agreement. Para 1, 2, 4. [online] Available at: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1468> (last accessed on October 19th 2021)

²³² The mechanism for the resolution of disputes between investors and States provided for by the free trade agreement between the EU and Canada (CETA) is compatible with EU law. Title, Para 4,5. [online] Available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-04/cp190052en.pdf> (last accessed on October 19th 2021)

independent tribunals. Although it expressed its concerns on whether it would be financially feasible for natural persons and small or medium-sized businesses to enter the procedure, the commitments made by the Commission and the Council in order to ensure their accessibility were regarded as a sufficient justification. Finally, the Court ruled that CETA contains adequate safeguards to ensure the independence of members of the proposed tribunals.²³³

According to the MEP Anna-Michelle Asimakopoulou, the Investment Court System (ICS) under CETA is entirely compliant with EU law, as per the Court of Justice of the European Union (Opinion 1/17, 2019).²³⁴

5.5 Rights of European citizens- Intense protest campaign

Many trade campaigners regard ICS as a relaunch of the contentious Investor-State Dispute Settlement (ISDS), posing a significant danger to environmental, labour, and public health policies, which might be targeted by firms as trade irritants. While this decision may come as a disappointment to some, it just emphasizes the importance of EU civil society continuing to engage with EU trade policy in order to ensure that it serves the public good rather than harming it.²³⁵

In fact, the ISDS was the major concern regarding the rights of the citizens of the EU and triggered intense protest campaigns. On September 2016, a month before the signing of the agreement, protests rose in Germany opposing the CETA agreement as well as the TTIP agreement. The participants were protesting that these agreements would allow banks and businesses to exploit and have authority over citizens on a global scale, as well as to disrespect social and environmental standards. (Protests in Germany against transatlantic TTIP and Ceta trade deals., 2016)²³⁶ A few months later, on the day of the approval of CETA by the European Parliament, protesters sought to disrupt the vote in Strasbourg. While 700 people were marching outside the Parliament to express their displeasure, the police removed a group of anti-globalization activists, who were blocking the entrance of the building. Despite the reservations, MEPs in Strasbourg accepted the agreement with 408 votes in favour, 254 against, and 33 abstentions after three hours of deliberation.²³⁷

This decision did not stop the opposition towards CETA. According to the organisation European Digital Rights (EDRi), the civil society organizations made some specific efforts to improve the text of the agreement. After the conclusion of the approval, the EU member states were called to ratify the agreement without any alterations to the text, a move that threatens the fundamental rights of citizens, especially in the spectrum of privacy and data protection. EDRi warns that if the

²³³ Ibid. para 6, 9, 10.

²³⁴ MEP A.M. Asimakopoulou, communication via email, October 25, 2021. Appendix 4th question.

²³⁵ European Court of Justice backs legality of CETA's Investment Court System. Para 4. [online] Available at: <https://epha.org/european-court-of-justice-backs-legality-of-cetas-investment-court-system/> (last accessed on October 19th 2021)

²³⁶ Protests in Germany against transatlantic TTIP and Ceta trade deals Para 6-8. [online] Available at: <https://www.bbc.com/news/world-europe-37396796> (last accessed on October 19th 2021)

²³⁷ European parliament passes EU-Canada free trade deal amid protests. Para 9-11. [online] Available at: <https://www.theguardian.com/business/2017/feb/15/ceta-trade-deal-canada-eu-passed-european-parliament> (last accessed on October 19th 2021)

Governments did not defend the rights of their citizens, CETA could become the model for other trade agreements. Therefore, it is important to design trade agreements that ensure the protection of the EU citizens.²³⁸

*According to another article of the organisation European Digital Rights (EDRi), their disagreement with the content of CETA is specified, on the ground that it touches matters beyond trade. First, the process of the negotiations was neither transparent nor democratic. Second, the cross-border data flow commitments in the Agreement abates the protection of the personal data and privacy. Third, the agreement's ICS bestows the right to businesses to dispute government decisions. Lastly, the intellectual property rights (IPR) provisions included in CETA bear resemblance to those of the rejected Anti-Counterfeiting Trade Agreement (ACTA).²³⁹

As per the protection of the rights of the European citizens, in the areas of labour rights and the environment, MEP A.M. Asimakopoulou claims that CETA includes binding obligations for both Parties and special mechanisms, which assist the EU and Canada to improve their practices on the enforcement of their domestic laws and to follow international rules. Concerning environmental protection, CETA itself, alongside the EU-Canada Strategic Partnership Agreement (SPA), outlines specific pledges for the Parties to endorse the UNFCCC initiatives, implement the Paris Agreement, and sustain high-level environmental dialogues, in order to combat climate change.²⁴⁰ In October 2017, the EU demanded a review of CETA's sustainable development measures, and in response, the CETA Joint Committee reaffirmed both parties' commitment to the implementation of the Paris Agreement in September 2018. Furthermore, the new ICS was established to address concerns about Investor-State Dispute Settlement procedures.²⁴¹

These commitments have been implemented on a political level, following the provisional entry of CETA into force on April 1st 2017, through mutual efforts made by the Parties on international fora, in favour of the protection of the environment and towards the implementation of the 2030 Agenda for Sustainable Development. Notably, Canada, China and the EU co-hosted the Ministerial Conference on Climate Action (MoCA) for two consecutive years (2017 and 2018). In the meantime, the Parties met for the EU-Canada High Level Dialogue on Environment in Ottawa, in 2017, to promote the Environment and sustainable development agenda and the following year in Brussels for the EU-Canada High-Level Dialogue on Climate Change to address COP24, the G7 and implementation of the Paris Agreement. This led to the creation of EU's new Partnership Instrument project "Strategic Partnerships for the Implementation of the Paris Agreement" (SPIPA), which possesses an overall budget of twenty-five million euros and aims at the implementation of the Paris Agreement by financing fifteen major economies, including Canada. Hence CETA has more advanced guarantees than any previous negotiated EU FTA to protect

²³⁸ Citizens' rights undermined by flawed CETA deal. Para 1,3,4. [online] Available at: <https://edri.org/our-work/citizens-rights-undermined-flawed-ceta-deal> (last accessed on October 19th 2021)

²³⁹ Despite large opposition, CETA limps forward in the European Parliament para. 3,4 [online] Available at: <https://edri.org/our-work/despite-large-opposition-ceta-limps-forward-european-parliament/> (last accessed on October 19th 2021)

²⁴⁰ MEP A.M. Asimakopoulou, communication via email, October 25, 2021. Appendix 2nd question.

²⁴¹ Ibid 5th question

citizens' rights, labour rights and the environment. Therefore, there is a potentiality for CETA to become a role model for future trade deals.²⁴²

5.6 Benefits only for big companies

As presented earlier, both Canada and the EU claim that CETA will benefit all citizens of the associated States, not only the enterprises. However, the Committee on Employment and Social Affairs of the European Parliament seems to disagree with this proclamation. The opinion of the Committee, which was published on December 8th, 2016, states that there is no single chapter in the agreement that offers particular measures to sustain the SMEs. Only 619 000 EU SMEs export outside the EU, even though there are currently 20.9 million SMEs in the EU (93 percent of which have fewer than 10 employees). Such SMEs will be exposed to the full force of competition from major North American transnational firms in the liberalized environment produced by CETA, putting the 90 million jobs (67 percent of total employment) that they provide in jeopardy. Even though CETA includes a separate chapter on trade and labour, there is a noticeable discrepancy in the degree of protection envisioned for investors versus labour interests and rights. The ICS system's special treatment of investors contrasts sharply with the consultative mechanism designed to safeguard worker interests and rights.²⁴³ Furthermore, Canada has yet to ratify the International Labour Organization's Convention on the Right to Organise and Collective Bargaining, and there is no system of sanctions in place for violations of labour and social rights and regulations.²⁴⁴

The above-mentioned mechanism is the Joint Interpretative Instrument. After a series of concerns and public debate surrounding a number of CETA provisions, the Joint Interpretative Instrument was created to clarify the influence of CETA on governments of either Parties, and an agreed interpretation of these provisions, in the sense of Article 31 of the Vienna Convention on the Law of Treaties. The provisions are the ability of governments to regulate in the public interest, the provisions on investment protection and dispute resolution, on sustainable development, labour rights and environmental protection.²⁴⁵

In regard to labour protection, it is stated in the text for the Joint Interpretative Instrument that, CETA stipulates that the Parties cannot loosen their labour laws in order to boost trade or attract investment, and that governments can repair any violations of this commitment regardless of whether they adversely influence an investment or an investor's profit expectations. Workers' rights to negotiate, conclude, and enforce collective bargaining agreements, as well as to conduct collective action, are unaffected by CETA. In addition, it is binding the Parties to ratify and implement effectively the fundamental Conventions of the International Labour Organisation

²⁴² Ibid, 2nd question.

²⁴³ OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS (8.12.2016) Para 3-5. [online] Available at: https://www.europarl.europa.eu/doceo/document/A-8-2017-0009_EN.html (last accessed on October 19th 2021)

²⁴⁴ Ibid.

²⁴⁵ Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States. Page 2, Paragraph e) of Preamble, [online] Available at: <https://data.consilium.europa.eu/doc/document/ST-13541-2016-INIT/en/pdf> (last accessed December 20th 2021).

(ILO). By the time of the creation of the JII Canada had ratified seven of the fundamental Conventions and had launched the process to ratify the remaining Convention (Right to Organise and Collective Bargaining Convention, 1949 (C98)), which was concluded on June 14, 2017.²⁴⁶ Finally, it is underlined that CETA establishes a framework for cooperation on trade-related labor issues of mutual interest among the Parties, in order to promote trade in a manner that is beneficial to workers and supports labour protection measures, through the involvement of ILO and a consistent dialogue with civil society.²⁴⁷

According to MEP Anna-Michele Asimakopoulou, the JII reaffirms CETA's provisions on labour rights, stating that labour-related factors are preserved in the Parties' CETA procurement tenders. She also reaffirms that the JII guarantees that the ICS will not result in foreign investors receiving preferential treatment over domestic investors, that governments retain the authority to modify legislation, even if an investment has a negative impact, and that the permanent Investment Tribunals would remain impartial. She concludes, however, that one should not overestimate the JII's significance due to the fact that its primary goal was to alleviate the reservations of certain member states on particular provisions. As a result, the only contribution the JII can offer is the clarification of the provisions in question in order to limit future disagreements, and subsequently to strengthen trade relations.²⁴⁸

²⁴⁶ International Labour Organization. Canada ratifies the Collective Bargaining Convention. Para 1, [online] Available at: https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/collective-bargaining/WCMS_558488/lang--en/index.htm last accessed December 20th 2021).

²⁴⁷ Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States. Pages 7-8, Paragraphs a-c of Labour Protection segment, [online] Available at: <https://data.consilium.europa.eu/doc/document/ST-13541-2016-INIT/en/pdf> (last accessed December 20th 2021).

²⁴⁸ MEP A.M. Asimakopoulou, communication via email, October 25, 2021. Appendix 3rd question.

6. CONCLUSION

The Comprehensive Economic and Trade Agreement, or CETA, is a trade deal that has the potential to be beneficiary for both participating Parties, the EU and Canada. However, the EU must ensure that the rights of the European citizens are safeguarded, by making sure that labour rights are protected through the mechanisms included in the agreement.

Furthermore, the EU must respect the rights of its member states during the provisional application of the treaty and facilitate the resolution of the potential issues that refrain some of them from ratifying the agreement, as it has previously done with the ISDS mechanism objections. The member states, on the other hand, must respect the authority of the EU in the agreed issues, such as the case of the ICS, which was declared legal by the CJEU.

Finally, the Parties should abide by the provision of CETA for transparency in the conduct of the treaty in order to respect the democratic values of the agreement and avoid any further complications of the procedure.

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Appendix.

In order to strengthen the research for this thesis, I created a questionnaire of five questions, for the purpose of gathering information from Members of the European Parliament regarding their opinion on CETA.

The questions were:

1. Will CETA benefit the macroeconomic situation of the EU? If no, why not, and if yes, how?
2. Will CETA manage to achieve protection of citizens' rights, labour rights and the environment?
3. What is your opinion on the Joint Interpretative Instrument? In what way do you think it will benefit (or fail to do so) the trade between the EU and Canada?
4. What is your opinion on the Investment Court System? Do you think it is compatible with EU law?
5. Do you think that CETA will eventually be ratified by all member states, and hence completely applied? What is the expected timeline, and what are the remaining obstacles (if any)?

I forwarded the questionnaire via email to the following Greek MEPs:

Mr. Nikos Androulakis, Mr. Konstantinos Arvanitis, Mrs. Anna-Michelle Asimakopoulou, Mr. Alexis Georgoulis, Mrs. Eva Kaili, Mr. Manolis Kefalogiannis, Mr. Petros Kokkalis, Mr. Stelios Kouloglou, Mrs. Elena Kountoura, Mr. Stelios Kypouropoulos, Mr. Georgios Kyrtos, Mr. Vangelis Meimarakis, Mr. Lefteris Nikolaou-Alavanos, Mr. Kostas Papadakis, Mr. Dimitrios Papadimoulis, Mrs. Maria Spyraiki, Mrs. Elissavet Vozemberg-Vrionidi and Mr. Theodoros Zagorakis.

I have received only the answers of MEP Anna-Michelle Asimakopoulou. Her answers were the following:

1. Will CETA benefit the macroeconomic situation of the EU? If no, why not, and if yes, how?

CETA will benefit European businesses, SMEs and consumers across Europe and it will enhance trade and investment flows on both sides of the Atlantic.

Only by looking at some numbers, it is clear that CETA has already been widely beneficial for both countries, especially for the EU.

Export Development Canada (EDC) has analyzed some useful figures on trade increases between Canada and the EU since the adoption of CETA. Exports from Canada to the EU grew by 21% from \$40 billion in 2016 to \$48 billion in 2019.

Imports from Canada to the EU grew by 27% from \$61 billion in 2016 to \$77 billion in 2019.

All told, the trade value increased by 25% during this period.

CETA has also greatly benefited small businesses. Notably, in the case of Greece, the Chios Masticha Growers Association (CMGA) has greatly profited from the agreement, not only because the CETA protects the Geographical Indication in EU trade of the Masticha Chiou products, which bans imitations, but it also makes easier to clear customs in the importing country, thus facilitating trade. Small Businesses across the EU, for example in Hungary, Italy, France, Belgium, and Latvia, have equally benefited from the EU-Canada CETA.

Therefore, yes, with the target of eliminating duties on 99% of all tariff lines, protecting 145 European Geographical Indications, , this modern agreement will continue to benefit the macroeconomic situation of the EU, while setting high environmental, consumer and labor standards to adapt to the necessary digital transition, ensuring Europe's resilience.

2. Will CETA manage to achieve protection of citizens' rights, labour rights and the environment?

The Agreement includes binding obligations on both parties to apply international rules on workers' rights, environmental protection and climate action. It improves the best practices for both the EU and Canada and includes some of the most advanced guarantees in these areas of any previously negotiated EU FTA.

Moreover, special mechanisms have been included that prevent governments from using exemptions or failing to enforce their domestic laws as a way to encourage trade and investment, where environmental or labor standards are concerned.

To give an example, the CETA and the accompanying political agreement, EU-Canada Strategic Partnership Agreement (SPA), include ambitious provisions on cooperation in combating climate change and protecting the environment.

In particular, on the **protection of the environment**, the **CETA** includes a strong commitment for both parties to cooperate on trade-related environmental issues of common interest, such as climate change. Notably, the implementation of the Paris Agreement is recognized as a shared responsibility for the European Union and its member states and Canada.

In addition, **the SPA**, negotiated alongside the CETA, includes specific commitments for both parties to mitigate the effects of climate change, by supporting the efforts of UNFCCC, implementing the Paris Agreement, maintaining high-level dialogues on the environment and climate change on the basis of inclusive cooperation.

In practice, since the provisional entry into force on 1 April 2017, partners have made notable efforts to meet those targets. At a political level, the EU and Canada have worked together in international fora to advance common goals, in favor of the protection of the environment and towards the implementation of the 2030 Agenda for Sustainable Development. In 2017, Canada, China and the EU co-hosted the first Ministerial on Climate Action (MoCA) in Montreal. Canada further hosted the EU-Canada High Level Dialogue on Environment in Ottawa, in line with promoting the Environment and sustainable development agenda. In 2018, the second MOCA was co-hosted by the EU, Canada and China in Brussels and the EU-Canada High-Level Dialogue on Climate Change addressing COP24, the G7 and implementation of the Paris Agreement took place in Brussels.

At an economic level, the EU launched a new Partnership Instrument project “Strategic Partnerships for the Implementation of the Paris Agreement” (SPIPA), with a total budget of 25 million EUR for the next 3 years for 15 major economies, including Canada, to finance bilateral activities in support of the implementation of the Paris Agreement.

Therefore, the CETA, together with the accompanying political agreement SPA, is, as a result, much more than a trade agreement, but an encompassing text which opens new possibilities for sincere cooperation at the international stage. It also demonstrates the continued political commitment to work together to combat climate change, protect the environment and respect sustainable development goals.

Therefore, with those provisions included, such as climate change I believe that once fully implemented, the agreement has a great potential to drastically contribute to the protection of citizens’ rights, labor rights and the environment at a global scale as set out in the agreement, setting the golden standard for future trade deals.

3. What is your opinion on the Joint Interpretative Instrument? In what way do you think it will benefit (or fail to do so) the trade between the EU and Canada?

The JII was initiated to accommodate some of the concerns of the CETA opponents, especially following the Wallonian parliament’s vote against CETA. It is a legally binding document that specifies how some disputed provisions of CETA should be interpreted, notably providing an explanation on the disputed Investment Court System (ICS) and the potential interference of the agreement with the rights of the government to regulate in the public interest. It also provides guarantees in the field of labor rights, sustainable development and environmental protection standards.

For example, regarding the latter, the JII reiterates CETA’s provisions on sustainable development, protection of the environment as well as labor rights, making clear that environmental, social and labor-related criteria are maintained within the parties’ procurement tenders under CETA.

It also reassures that the ICS will not result in a more favorable treatment of foreign investors than domestic investors, that governments still have the ability to change laws- even if an investment is negatively affected- and confirms the impartiality of the permanent Investment Tribunals.

However, we should not overestimate the importance of JII, as its primary intention was to try to ease some member states' concerns over certain provisions, as explained. It can therefore only help to clarify some provisions, such as investments, dispute settlement and environmental standards, as well as reduce future disagreements, all of which will subsequently improve trade links.

4. What is your opinion on the Investment Court System? Do you think it is compatible with EU law?

The Court of Justice of the European Union confirmed in April 2019 that the Investment Court System (ICS) under CETA is fully compatible with EU law (Opinion 1/17, 2019).

5. Do you think that CETA will eventually be ratified by all member states, and hence completely applied? What is the expected timeline, and what are the remaining obstacles (if any)?

In October 2016, the parliament of Wallonia voted against the ratification of CETA, because of concerns linked to public services and agriculture provisions.

This led to Belgium's federal government taking the issue to the ECJ in September 2017, in accordance with an internal political agreement. By the time the ECJ had confirmed in April 2019 the compatibility of the agreement, in response to this request, however, it had already had the effect of rallying opposition in other member states, leading to further delays.

In the case of **Greece**, the protection of intellectual property rights, especially the agricultural and processed products of Protected Designation of Origin (P.D.O.) and the Geographical Indications (G.I.), are the most important and challenging provisions. Despite these concerns, the CETA offers **solid safeguards to consumers** and businesses and gives great opportunities for economic growth and investment. Besides, CETA's thirty chapters cover numerous other issues, such as rules of origin, customs and trade facilitation, subsidies, intellectual property rights, regulatory cooperation, sustainable development, competition policy and public procurement.

Regarding protection of the environment, and in response to a demand for a review of CETA's sustainable development provisions in October 2017 by the EU, the CETA Joint Committee affirmed the commitment of both parties to the implementation of the Paris Agreement in September 2018. Moreover, the new ICS was put in place to alleviate concerns associated with Investor-State Dispute Settlement mechanisms.

Therefore, I am optimistic that member states will ratify the CETA agreement as it offers great growth opportunities and leaves no one behind while being in line with the sustainable development goals and climate action. However, the benefits can only be reaped once CETA is fully ratified and implemented.