
CETA AND THE FUTURE OF EU FREE TRADE AGREEMENTS

Key points:

- The extra political scrutiny of CETA can in part be attributed to the European Commission agreeing to change the nature of the trade deal from an “exclusive” to “mixed” agreement. This means CETA has to be ratified in Member States as well as in the European Parliament. The Commission came under significant pressure to grant member state parliaments more of a say.
- Previous convention has been for the EU institutions to have “exclusive competence” over trade policy.
- In the interim, it may be the European Court of Justice which decides on whether future EU FTAs are mixed or exclusive EU competence.
- The increased fragility of such trade deals will have implications for any UK-EU free trade agreement and is why the UK government could attempt to seek an “interim agreement” through or in parallel with Article 50 negotiations, as any “interim” deal may have a greater chance of ratification.

Q&A with Culmer Raphael director, Alasdair MacEwen

- [*What is CETA?*](#)

CETA is the *Comprehensive Economic and Trade Agreement*, a Free Trade Agreement between Canada and the European Union. Formal negotiations began in 2009.

- [*What does it involve?*](#)

The principal elements of the agreement can be found in this European Commission (EC) [document](#). The [changes agreed in the last few days](#) have not impacted on these. CETA attempts to remove a wide range of economic and trade barriers between the EU and Canada, ending almost all customs duties or tariffs on industrial goods, ending limitations to access to public procurement and opening up some services sectors.

- [*What's been happening on CETA?*](#)

The contents of the deal were finally agreed between Canada and the EU in 2014. It has since undergone a legal review with formal agreement this month (October 2016) and a formal signing by the EU and Canada. The next stage will see CETA provisionally come into force in 2017.

As a “mixed agreement” (meaning there is mixture of exclusive EU competence and member state competence), CETA requires the approval of the European Parliament and the ratification of all individual member states, their 38 parliaments and sub-parliaments.

- [*Why is individual member state approval needed?*](#)

The rules around competency over EU trade deals have changed over the last decade and, arguably, the power of the EU's institutions over them has been dispersed. Since the [Treaty of Rome](#) in 1957, the EC had exclusive power to negotiate trade agreements on behalf of member states. The 2007 Lisbon Treaty gave more power to the European Parliament over trade by increasing MEPs' power of scrutiny over trade deals and making all trade deals subject to its approval before any ratification. But the most significant change was [in July this year](#), when - [under pressure from EU member states](#) - EC President Jean-Claude Juncker and Trade Commissioner Cecilia Malmström abandoned the plan of “fast-tracking” the CETA deal by agreeing to change the nature of the trade deal from an “exclusive” to a “mixed” agreement.

- [*What does it mean for other trade negotiations?*](#)

This could make future EU trade negotiations much more fragile, by vastly expanding the number of political actors involved. Changing the nature of the deal to a “mixed” one opens up the need for ratification by individual Parliaments and sets a precedent for future deals. The EU's previous “exclusive competence” over trade deals was one area where the EU was seen to be highly effective. More trade agreements (like TTIP for example) will be defined as “mixed agreements” and will therefore require a deeper level of political approval through national parliaments.

- [What does this mean for a future trade deal between the UK and the EU?](#)

The experience of CETA probably means that any future Free Trade Agreement between the UK and the EU will also be subjected to full parliamentary approval by the EU's 27 remaining member states, lengthening the approval process and heightening the possibility of collapse.

The CETA experience could therefore strengthen the resolve of the UK government to circumvent existing rules and conclude an "interim" trade deal in parallel to the Article 50 negotiations. Any interim deal would still require ratification in the European Parliament but would not require the signoff of individual national parliaments around the EU and it could be agreed through Qualified Majority Voting in the Council. The UK hope may be that such a deal then turns into a permanent one. Indeed, in his [recent evidence](#) to the House of Commons *EU Scrutiny Committee*, UK International Trade Secretary Liam Fox [hinted](#) that the UK strategy may involve attempting such an agreement.

[Constitutional experts](#) and Trade Commissioner Malmström have, however, repeatedly stressed that no trade deal can be negotiated or agreed to in parallel with Article 50. They have said that any long-term deal would see the EU treating the UK as a third country.

- [Could the trade changes have been avoided?](#)

The recent decision to change CETA's status was taken in a febrile political atmosphere and one can see how the EC may have felt the need to make concessions. It was soon after the UK's vote to leave the EU for example. NGOs and anti-globalisation groups have for many years been arguing for greater national control over trade deals

particularly with the ongoing TTIP negotiations. National parliaments (including that of the UK) have been asking for more transparency and oversight over trade; and in June the French and German governments openly lobbied for greater national control.

- [Could exclusive competency be reinstated?](#)

It is possible but, in the meantime, the future of competency [could be defined](#) by the European Court of Justice (ECJ).

When announcing the decision to make CETA mixed, Malmström said:

"the issue of competence for such trade agreements will be for the European Court of Justice to clarify, in the near future. From a strict legal standpoint, the Commission considers this [CETA] agreement to fall under exclusive EU competence. However, the political situation in the Council is clear, and we understand the need for proposing it as a 'mixed' agreement, in order to allow for a speedy signature"

Underway at the same time as CETA has been a European Court of Justice (ECJ) examination of the EU Free Trade Agreement with Singapore – said to be very similar in form to CETA - on whether it should be defined as a mixed or exclusive agreement. There was a hearing on Singapore in September 2016 and we can expect an ECJ decision by 2017.

Further Reading

The House of Commons library provides a very useful [summary](#) of CETA and see a recent [comment](#) piece on exclusive competence and trade policy.

About Culmer Raphael

Culmer Raphael is a political strategy and communications consultancy whose consultants have several decades of experience working between Brussels, London and the UK's devolved assemblies.

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