

# What is Really the Matter with the EU-Canada CETA Trade Agreement?

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*Canada's Trade Minister Chrystia Freeland's sense of amour propre was clearly dented last week when the latest talks to salvage the [Comprehensive Economic and Trade Agreement](#) (CETA) between the European Union and Canada appeared to fall apart in face of the refusal of the Belgian regional parliament in Wallonia to accede to the Belgian government's support for it. The story is by no means over, but it would be quite wrong to think that what really threw this spanner in the works was that the EU was incapable of reaching an agreement, [as she put it](#), "even with a country with European values such as Canada, even with a country as nice and patient as Canada."*

First of all, Canadians might be expected to understand why Belgium's failure to secure the consent of the Walloons mattered so much. The Canadian federal experience has often required securing inter-governmental unanimity, and lent an effective veto not only to Quebec, but even to the tiny province of Prince Edward Island. If Manitoba, with a population of around one million, could write *finis* to Canada's last attempt at a Constitutional accord, why should Wallonia, with well over three million inhabitants, not be able to stop a trade agreement?

Moreover, Canadians know well enough that the opposition being registered by one provincial government usually resonates with a substantial body of opinion in other regions. And that is certainly the case with CETA, which has aroused very considerable concern right across Europe. It was only by a hair's breadth that CETA secured the approval last month of the German Social Democratic Party, the junior partners in Europe's most powerful government. The disquiet over CETA in fact followed on directly from what disturbed so many Europeans about the U.S.-EU free trade agreement that bore the acronym [TTIP](#).

## So-Called Free Trade Agreements

All free trade agreements since the U.S.-Canada FTA (over which the 1988 Canadian election was fought, with the Liberal Party then strongly opposing the deal) have created the illusion that they have primarily been about reneging on the old political economy of tariff protectionism. But this was already accomplished by the progressive reduction in tariffs that took place in the post-war decades under the General Agreement on Tariffs and Trade, and in Europe itself by the Treaty of Rome and the Common Market it spawned. The so-called free trade agreements kicked off by the FTA have been much more about dismantling so-called 'non-tariff barriers' which establish rights for multinational corporations, deploying the talent and resources of the foremost international law firms, to escape and undermine domestic economic regulation.

What is especially worrying to a great many Europeans, now that they believe they have managed to render TTIP a dead letter, is that CETA will bring it in via the back door. A U.S. company with a subsidiary that does business in Canada will qualify as a Canadian investor under CETA, so it is not just a matter of Canadian resource and finance companies posing a real threat of claims against Europe. Under CETA's investor-state dispute provisions, to be implemented through a new investment court system, individual companies could sue states for alleged discriminatory practices in their regulations, and if successful thereby allow domestic investors to escape regulation as well. Yet despite allowing special claims and access to public money by foreign investors, CETA sets out no actionable investor responsibilities, domestic or foreign, alongside these rights.

Moreover, no one else affected by such a dispute, e.g. a local municipality or a province or a First Nation, is given a right of standing in the juridical process – making it fundamentally unfair as well as undemocratic.

That Canada under the former Conservative government of Stephen Harper should have conceived and promoted CETA was perhaps not surprising, but it must surprise many Europeans that the Trudeau Liberals who came to office last year with such progressive fanfare should now, with only minor edits, be on the same page. And it is by no means clear that most Canadians are really so eager to be the conduit for foreign investors to escape economic, labour and environmental regulation, and thereby help domestic investors escape regulation as well. Indeed, under CETA, Canada's own exposure to foreign investor claims would roughly double because Western European companies invest about as much in the Canadian economy as do U.S. investors. Under NAFTA, the decisions of the Canadian judiciary on the constitutionality of many laws and regulations cannot be taken as final until all foreign investors eligible to bring claims have not done so or have run out of time to do so. Moreover, no one else affected by such a dispute, e.g. a local municipality or a province or a First Nation, is given a right of standing in the juridical process – making it fundamentally unfair as well as undemocratic.

Under enormous pressure to back down, the Walloons appear to have managed to at least secure the concession from the Belgian government not only to assess the economic and environmental impact of CETA, but also to insist on the right to go to the European Court of Justice to determine whether the decisions of the new investment court system were compatible with EU law. But even as the Belgian government joins the other 27 European governments in signing CETA, its ratification by all their parliaments is far from assured, since the broad coalition in Wallonia that stood up to CETA – encompassing Christian Democrats and Socialists as well as Marxists – is reflective of the breadth of the opposition across Europe.



The social attitudes of those opposing CETA are quite different from those of the xenophobic far right parties which have made such gains in Europe. The rejection of CETA as well as the TTIP would not have anything to do with rejecting the values of diversity and democracy, as Ms. Freeland's comments implied. If anything, it has been the failure of the mainstream parties to articulate in a progressive manner the discontent with what has come with state promotion of 'free trade' over the last three decades that has opened so much political space for the Le Pens, on one side of the Atlantic, and for the Trumps, on the other. •

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