

CETA: Liberalisation of Public Services in the EU-Canada Trade Agreement

EPSU
Meeting on CETA

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CETA: Impact on public services

Standstill: International 'lock in' of liberalisation and privatisation achieved on national levels

Progressive Liberalization: Extending a growing set of trade rules to ever more public services

Enforcement: Providing governments and corporations with dispute settlement procedures forcing compliance with trade rules

Chapters affecting public services

TBT/SPS/Regulatory Coop (science vs precaution)

Subsidies

Investment/Cross-Border Trade in Services (+ Annexes)

Temporary Entry and Stay of Natural Persons (specialists)

Mutual Recognition of Professional Qualifications

Domestic Regulation

Financial Services

Telecommunications

Electronic Commerce

Compet. Policy/State Enterpr, Monopolies, Special Rights

Government Procurement (+ Annexes)

Trade and Sustainable Development/Labour/Environment

Dispute Settlement (state-state disputes)

Investment Chapter: Article 8.1.

Forms that an investment may take include:

(a) an enterprise;

*(b) **shares, stocks and other forms of equity participation** in an enterprise;*

(c) bonds, debentures and other debt instruments;

...

(f) an interest arising from:

*(i) a **concession** conferred pursuant to the law of a Party or under a contract, including to search for, cultivate, extract or exploit **natural resources**,*

*(ii) a turnkey, **construction, production or revenue-sharing contract**;*

ISDS claims targeting concessions

United Utilities vs Estonia: ICSID claim over refusal to authorise rate increase, alleged FET violation, filed under NL-Estonia BIT

Veolia vs Egypt: waste concession, ICSID claim over refused rate increase after minimum wage

ADO vs Portugal: Termination of transport concessions by new government

Art. 1.9: Rights and Obligations: Water

3. If a Party permits the commercial use of a specific water source, it shall do so in a manner consistent with this Agreement.

Risk: As concessions and water rights are covered, termination of water use rights might trigger disputes.

Investment Chapter: Article 8.15

- 5. Articles 8.4, 8.6, 8.7 and 8.8 do not apply to:*
- (a) procurement by a Party of a good or service ...; or*
 - (b) subsidies, or government support relating to trade in services, provided by a Party.*

Consequently: Articles 8.10 (FET) and 8.12 (ExProp) continue to apply

FET: Fair and equitable treatment (legitimate investor expectations)

ExProp: direct and indirect expropriation

Subsidies under pressure

CETA: Every two years each party has to notify „any subsidy granted or maintained within its territory“

Goes beyond EU state aid law which exempts from prior notification:

- a) Support for SGI
- b) Certain compensation payments to SGEI
- c) Compensations to health and social services

ISDS, FET, ExProp apply to subsidies

Italy, Spain: ISDS claims over phasing out of subsidies awarded to renewable energy

Risks: Government Procurement

Binding thresholds for goods, services and works:
Setting higher thresholds increasingly difficult

Lack of social clause: tying award of public contracts to collective agreements may be challenged.

CETA weaker than new EU Procurement Directive:
allows obligation to comply with collective agreements,
and selection criteria based on best price-quality ratio.

Exceptions weak: measures to protect human health must be „necessary“, must not constitute „arbitrary discrimination“ or a „disguised restriction on trade“.

Progressive Liberalization: CETA as a „living agreement“

Ratchet:

future liberalisation becomes binding commitment

CETA Joint Committee:

„may consider or agree on amendments“

Parliamentary scrutiny? (Art 218.7 TFEU)

Note on services concessions (Gov Proc Chapter):

EU stands ready „to take up negotiations with Canada in view of extending the mutual coverage of services and services concessions“

Interpretative Declaration I

Public Services

CETA does not prevent governments from regulating the provision of these services in the public interest.

>> Silent on chilling effect of potential claims

CETA will not require governments to privatise any service nor prevent governments from expanding the range of services they supply to the public.

>> Expanding public service provision limits business opportunities, i.e. ,legitimate‘ investor expectations

Interpretative Declaration II

Public Services

*CETA will **not** prevent governments from providing public services previously supplied by private service suppliers or from **bringing back under public control** services that governments had chosen to privatise. CETA does not mean that contracting a public service to private providers makes it irreversibly part of the commercial sector.*

>>Again: Silent on chilling effect of potential claims

Interpretative Declaration III

Water

*CETA does not oblige Canada or the European Union and its Member States to permit the **commercial use of water** if they do not wish to do so. **CETA fully preserves their ability to decide how to use and protect water sources.** Furthermore, **CETA will not prevent the reversal of a decision to allow the commercial use of water.***

>>Misleading: As concessions and water rights covered by investment protection freedom to protect water sources may be impaired.

Thank you for your attention!



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