

The future of EU trade negotiations: What has been learned from CETA and TTIP?

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About a year has passed since the Walloon government opposed the ratification of the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada. Since then, Donald Trump's presidency has brought transatlantic negotiations over TTIP to a halt and provided much-needed space for reflection.

Both cases prompted a great deal of attention to be devoted to the institutional setup for EU trade negotiations. Questions have been raised as to whether the EU can still credibly negotiate with its external partners, how democratic oversight can be ensured, and what role national parliaments should have in the process.

The academic debate over these issues has been shaped by the Namur declaration, which sought to change the way the European Union negotiates international trade agreements. It was signed by Paul Magnette, the then Minister-President of Wallonia, as well as a number of academics, and prompted a response, the Trading Together declaration, which included the signatures of some 60 academics. The Court of Justice of the European Union's opinion on the EU-Singapore free trade agreement, published in May of this year, alongside initiatives by the European Ombudsman, have also fed into this discussion. The trade package presented in Jean-Claude Juncker's 'State of the Union' speech in September was the culmination of this year of reflection, and we now stand at a point where it is possible to assess the lessons that have been drawn and what the future might hold for EU trade politics.

Beyond the choice of acronyms used to describe free trade agreements, the main lessons drawn by the Commission show a desire to institutionalise opposition to agreements, rather than allow opposition to develop against the EU's institutions. Faced with unprecedented levels of public interest, the EU institutions were unable to channel or address concerns about CETA and TTIP, which often left the Commission to face the brunt of public opposition. The proposed reforms suggest a willingness to contain the debate within representative institutions. There are at least three reasons that underpin this observation.

1. Containing public discontent

During the negotiations over CETA and TTIP, numerous civil society organisations took to the streets and approached members of national parliaments, as well as MEPs. For supporters of the negotiations, the perception took hold that several of these civil society organisations were manufacturing discontent with the sole objective of undermining the discussions, and that some actors had taken to spreading misleading information about the content of the proposed agreements. This prompted the response that supporters of CETA and TTIP were simply intent on shooting the messenger rather than addressing the criticism that had been raised.

Amidst the heated debate, a desire emerged from the institutions to identify suitable communication partners in civil society and tackle those they felt were articulating misinformation. The EPP-group thus unsuccessfully proposed to exclude NGOs from funding if they spread ‘untruths’. This echoed a narrative used by the Commission when it battled against myths and misinformation throughout the CETA and TTIP negotiations.

Beyond the delegitimisation of several of these groups, the Commission also made an overture to civil society by transforming the TTIP Advisory Committee into a formal expert group. The potential legitimacy of such a corporatist approach to interest representation hinges on the resulting balance between the represented interests within the committee and the extent to which the Commission will take their advice into account.

2. Urging the Council to take up its representative role in EU decision-making

Whereas the member states actively oversee on-going trade negotiations, this observation is not shared by the broader public as Council debates in the relevant committees remain secretive. A perceived lack of accountability led to frustration amongst Commission officials and Members of the European Parliament who called upon member governments to publicly defend their positions at home – with limited success.

The negotiating mandate plays an important role in this regard. Initial requests by the Commission to publish Council documents were only met after long delays and increasing public pressure. The publication of the Commission proposal for a negotiating mandate for the trade negotiations with Australia and New-Zealand put the ball firmly in the court of the Council. It is now up to the Council to discuss any revisions and claim public ownership of the resulting mandate.

More broadly, the European Ombudsman has also been advocating greater transparency in Council representative work. While earlier initiatives focused on the publication of the TTIP negotiating mandate or access to documents relating to the trilogue meetings, the Ombudsman's ongoing inquiry concerns the preparatory work in Council working parties.

3. Assigning a clear (but limited) role to national parliaments

National parliaments only have veto-power if the trade negotiation covers topics belonging to the member states' competencies. While the reforms introduced by the Treaty of Lisbon streamlined trade competencies at the EU-level, several exclusions and the incomplete nature of the treaties left room for interpretation as to the exact scope of the supranational competencies. This uncertainty could be used strategically by member states and the Commission. Yet the CETA experience made clear that, in the face of politicisation, this represented a critical liability. With Opinion 2/15, the Court of Justice provided greater clarity on the exact division of competencies through an examination of the EU trade agreement with Singapore.

The Commission seized this opportunity to propose a two-track approach for future trade negotiations, whereby the elements that require national parliamentary ratification are put in a separate agreement. This implies national parliaments have no vote on the bulk of the resulting trade agreement. Instead, the Commission – as specified in the trade package – foresees national parliaments playing the role of domestic scrutinisers of their respective governments. By publishing the mandate proposal with the explicit demand of having it discussed in national parliaments, the Commission hopes to nudge them into accepting this role. The European Parliament has already responded positively to such a two-track approach in a recent resolution, but it remains to be seen how the member states will react.

Awaiting the member states' reaction

Jointly, these three developments all point towards a belief in conventional forms of political (interest) representation through mandated institutions. Whether the Commission's views will come to fruition is far from certain and hinges on member states and civil society organisations acquiescing to their prescribed roles.

The hesitance of the Council to publish earlier negotiating mandates, despite repeated demands from the Commission and the European Ombudsman, has raised broader questions over their willingness to play a publicly accountable legislative role. Moreover, in the leadup to an informal meeting of national trade ministers in October, the French government clarified that before moving forward, ‘a global vision on EU trade policy’ is needed, simultaneously suggesting a continued role for national parliaments.

The following months are therefore crucial for the future of EU trade policy. How will member states respond to the Commission’s proposals? Will national parliaments discuss the negotiating mandate on Australia with their governments in the absence of politicisation? And which interest groups will be represented in the expert committee? While the Commission wants to address critical voices within the institutions, those institutions may not be fit or willing to resolve such opposition in a legitimate manner.