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Potential Consequences if the EU Rejects CETA

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Belgium's Wallonia region has refused to accept CETA, the EU-Canada free trade agreement negotiated for the last seven years. Although Wallonia retains the option to endorse it in the future, it is unclear when and how that may happen. The rejection of the deal will decrease both the economic and political influence of the EU in the world.

Negotiations of the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada were launched in 2009 and finalised in 2014. The two years that followed included legal review and translation of the text of the agreement into EU official languages. CETA not only will eliminate over 98% of import tariffs but also will reduce non-tariff barriers such as different product standards, double inspections, and limits on access to the procurement market. It also includes a dialogue on future standards and regulations and investment protection. The agreement was to be signed on 27 October during the EU-Canada summit if all the EU Member States had given their consent. However, on 14 October, Paul Manette, the minister-president of the autonomous region of Wallonia—one of three in Belgium that together lead to decisions by the federal government—rejected the signing of CETA.

Unsuccessful Struggle to Save the Deal. Starting in 2013, when negotiations were launched on the free trade agreement with the U.S. (Transatlantic Trade and Investment Partnership, or TTIP), public protests have been held in Europe, mostly in Germany, Belgium and France. Because of the similarities between CETA and TTIP and the influence of the U.S. and Canadian economies, the demonstrations rallied against both treaties. Most of the objections and controversy stems from an arbitration process included in the treaties called Investor-State Dispute Settlement (ISDS). This part gives foreign investors the possibility to sue governments of countries in which they have investments if they believe new regulations discriminate against them or unfairly limit their access to the market. There is broad social anxiety that companies can abuse this possibility, and so the European Commission has carried out consultations on the matter. In the end, the EC proposed reform of the ISDS instrument, recommending acceptance of some of the demands of concerned NGOs. In 2016, Canada accepted these changes, even though the CETA text was supposedly closed. The ISDS mechanism and its private arbitrators were replaced with the Investment Court System (ICS), a permanent arbitration tribunal with 15 members appointed by the EU and Canada. The possibility of appeal was included into the ICS system. A government's right to regulate such areas as public health or the environment was also emphasised in the text.

These changes did not stop the protests, however, which is why in autumn 2016 both partners prepared a "Joint Interpretative Declaration" that was to become a binding part of the agreement. Its main aim was to ensure the text would be interpreted according to the intentions of both partners. Mainly, it stressed once more that the investment protection mechanism would not limit a government's right to regulate. This declaration might be seen as another concession from the Canadian side after the deal was brokered. However, the minister-president of Wallonia found the reassurances to be insufficient and, at the same time, said the region feared increased imports of meat products from Canada. This veto resulted in further negotiations of the exact text of the joint declaration.

On 21 October, Chrystia Freeland, Canada's international trade minister, declared that the talks had failed. The next day, she eased that stance, reassuring her partners of her country's readiness to seal the deal but also declaring that it is not her job to overcome Wallonia's and Belgium's objections. The EU, in turn, set a deadline of 24 October for Belgium to work out its final position. Wallonia, however, did not withdraw its objection. There is still hope that the EU-Canada summit and signing planned for 27 October can be held.

Ratification Hangs in the Balance. Even if Belgium were to give its consent to CETA, ratification of the agreement would be a very complicated and time-consuming process. Under pressure from some Member States that wanted to guarantee national ratification procedures, the EC found CETA to be a "mixed agreement," that is, its provisions extend beyond the EU's exclusive competences. That means ratification must traverse two tracks: first, the EU institutions (EU Council and European Parliament) will vote on the deal, and second, all the Member States according to their own national procedures. The decision on CETA was deadlocked in the first try in the EU Council, which requires unanimous consent.

If Belgium drops its veto, ratification by the EP should be rather smooth as liberal, centre-right, conservative and most of the centre-left members support CETA. However, strong protests—mainly in Germany, Austria and Belgium—might threaten full ratification of the deal, especially since the process will take a few years. For instance, it took four years to ratify the EU free trade agreement with South Korea. Given the current circumstances, if ratification moves forward, the Member States might try to speed it up to try to keep the protests from increasing. However, if it fails on the Member State level, there are few scenarios possible: total withdrawal from the agreement, limitation to the EU's exclusive competences (to avoid Member State ratification), or partial renegotiation and repeating ratification. It is unlikely that Canada would agree to the last scenario after so many years of struggle with no effect. On the other hand, limiting CETA to just the EU's competences, mainly the elimination of duties, would bring few benefits to either side.

CETA's Importance for Poland. Canada is a growing market with even more potential for Polish products. In 2015, Polish exports to Canada amounted to €1.1 billion, five times more than in 2004, averaging 20% growth per year, and Poland has recorded a surplus the entire time. Its trade with the North American partner amounted to 3% of Polish extra-EU exports in 2015. Poland is the EU's eighth biggest exporter to Canada, with (coincidentally) 3% of the bloc's total exports.[1]

Most of the goods exported to Canada are not burdened with tariffs. Duties on other goods amounted to 15.9% for agricultural products and 2.2% on non-agricultural items. CETA will eliminate 98.6% of the tariff lines. The highest of them cover dairy products (almost 250%), animal products (25%), cereal and preparations (21%), and clothing (16.5%).

From the perspective of trade between Poland and Canada, CETA could further increase Poland's surplus in trade with Canada. Tariffs will remain on most dairy, animal and cereal products or duty-free imports will be limited. Much growth potential can be seen in exports of clothing, furniture, cosmetics, fruits and vegetables. The EU retained barriers mostly on imports of meat products (for example, poultry tariffs will remain and limits will be placed on beef, veal and pork). Duties on cereals would be eliminated over an 8-year phasing-out period so that farmers can prepare for the increase in competition. Polish investors such as mining company KGHM could also benefit from changes in regulations on employee posting within the company.[2] The investor protection clauses now included in CETA—still seen as a threat to democracy in Belgium and Germany—would be net positive for Poland because without CETA, a bilateral investment agreement from 1990 is in force and it includes an ISDS clause that gives no guarantees to the government, no appeal mechanism and no permanent court.

Consequences of CETA's Rejection. If Belgium's veto holds or CETA fails to be ratified, it would squander seven years of negotiations and reduce the EU's position in the world. It would be considered a failure of European trade policy and dispel hopes that it can plan an active role in setting global standards. The agreement is about more than the elimination of duties; it establishes the foundations for lasting regulatory cooperation between the EU and Canada. Ratification could be the first step in spreading at least some EU trade rules and product standards to third countries. It could strengthen the EU's negotiating power against the U.S., for example, by pushing it to adopt the ICS system, which it has resisted.

Rejection of the agreement also diminishes the attractiveness of the EU as a trade partner and the credibility of the EC to negotiate international treaties on behalf of the bloc of 28 Member States. Canada's willingness to compromise and make concessions seems not to have had any effect on internal EU resistance to the deal, so that may be a signal to other countries that talks on the EU level may be pointless. This precludes the likelihood of success in negotiations not only with the U.S. but also with Japan, New Zealand, Australia or even China as well. The lack of these agreements will result in lost potential economic benefit, and rejection may harm EU shares in these markets if other countries make large deals, such as the Trans-Pacific Partnership (TPP) finalised between Canada, the U.S. and 10 Pacific Rim countries. The troublesome ratification of CETA also indicates how difficult it will be for the UK to negotiate beneficial conditions on a Brexit deal because it also requires unanimous consent from the remaining Member States.

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[1] Source: Eurostat.

[2] See also: Ł. Ambroziak, "Efekt kreacji w handlu Polski z Kanadą po wejściu w życie umowy CETA," *Unia Europejska.pl*, no. 2 (237), 2016, pp. 19–28.