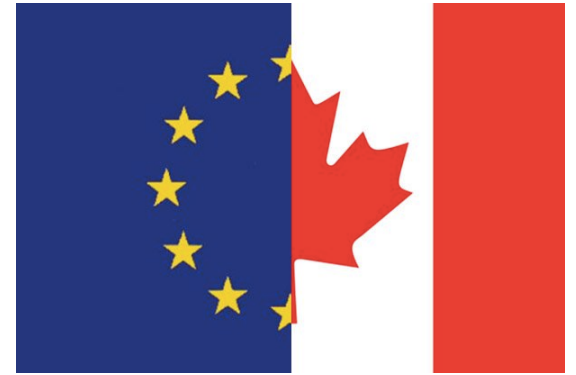




An Introduction to CETA



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Trade and sustainability: CETA dissected, The Hague, 26 January 2016



Selected publications:

J. Larik, 'Critiquing TTIP: Systemic Consequences for Global Governance and the Rule of Law', *Legal Issues of Economic Integration*, Vol. 43, No. 4 (2016), pp. 423-436

J. Larik, *Foreign Policy Objectives in European Constitutional Law* (Oxford: Oxford University Press, 2016)

J. Larik, 'Die Unionstreue in der gemeinsamen Handelspolitik: Harmonielehre in einer sich wandelnden Klanglandschaft', in: C. Herrmann and M. Bungenberg (eds.), *Die gemeinsame Handelspolitik der Europäischen Union fünf Jahre nach Lissabon – Quo Vadis?* (Baden-Baden: Nomos, 2016), pp. 45-69

J. Larik, 'Much More Than Trade: The Common Commercial Policy in a Global Context', in: M. Evans and P. Koutrakos (eds.), *Beyond the Established Legal Orders: Policy Interconnections Between the EU and the Rest of the World* (Oxford: Hart Publishing 2011), pp. 13-45





Structure

1. Introduction
2. CETA's history
3. CETA's final content
4. Two perspectives on CETA
5. CETA and "Brexit"
6. Conclusion and outlook





1. Introduction

CETA in context:

- Deadlocked Doha Round
- EU's normative trade agenda
- Civil society criticism of FTAs
- Need to “reset” trade policy (Minister Ploumen)
- U.S. elections and withdrawal from TPP
- Fate of TTIP?
- Fate of NAFTA?





1. Introduction (cont'd)

Treaty on European Union, Article 3(5):

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to [...] the sustainable development of the Earth, [...] free and fair trade, [...] as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

European Commission's "Trade for all" Strategy (2015):

"The Commission will [...] promote an ambitious and innovative sustainable development chapter in all trade and investment agreements."

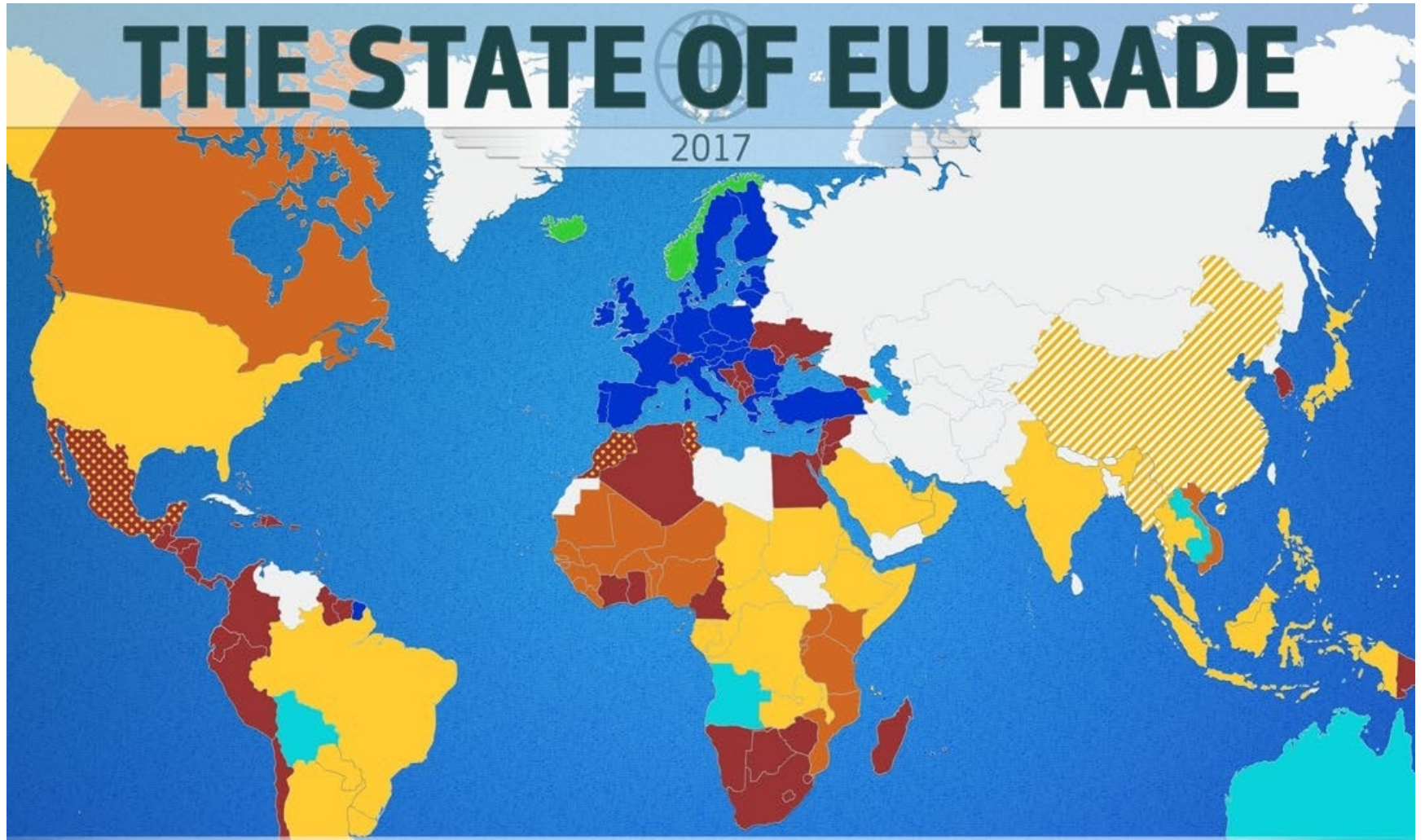
Global Strategy for the European Union's Foreign And Security Policy (2016)

"We will use our trade agreements to underpin sustainable development, human rights protection and rules based governance."



THE STATE OF EU TRADE

2017



- EU & Customs union (Andorra, Monaco, San Marino, Turkey)
- European Economic Area (Norway, Iceland, Liechtenstein)
- Preferential trade agreement in place (FTA, EPA, DCFTA)
- Preferential agreement awaiting adoption/ ratification
- Preferential trade agreement being negotiated
- Potential for free trade partnership
- Stand-alone investment agreement being negotiated
- Preferential agreement in the process of modernisation



2. CETA's history

- *May 2009*: Launch of negotiations
- *Aug. 2014*: Main negotiations concluded
- *July 2016*: CETA declared “mixed” for political reasons
- *Oct. 2016*: “Wallonia crisis”
- *27 Oct. 2016*: Joint Interpretative Instrument





2. CETA's history (cont'd)

- *30 Oct. 2016:* Approved and signed by EU and Canada
- Pending ratification by Canada, EU and Member States before entry into force
- *Dec. 2016:* CJEU Opinion 2/15 (EU Singapore FTA), AG Sharpston Opinion → “mixity” legally required
- *24 Jan. 2017:* CETA approved by EP Trade Committee
- Possibility to provisionally apply CETA





3. CETA's final content

Substantive coverage:

- Trade in Goods
- SPS measures
- TBT
- Subsidies
- Trade in Services
- Investment
- Transport
- E-commerce
- Competition
- Gov't procurement
- IP
- Regulatory Cooperation
- Trade and Sustainable Development
- Trade and Labour
- Trade and Environment



3. CETA's final content (cont'd)

Institutional provisions:

- CETA Joint Committee
- Further specialized committees, including a Committee on Trade and Sustainable Development
- Investor-State Dispute settlement, including an appellate tribunal
- Inter-party dispute settlement (one-shot arbitration, does not apply to “Trade and Labour” and “Trade and Environment” chapters)
- Expert panels and a civil society forum



Overview of commitment under trade and sustainable development chapters in CETA

DIALOGUE AND COOPERATION PROVISIONS

- > commitment to dialogue
- > civil society involvement
- > general cooperation provisions on labour and environmental issues listing possible cooperation methods and topics
- > provisions on cooperation on specific issues (only in the environment chapter: trade in forest products, trade in fisheries and aquaculture products)
- > cooperation in international fora (ILO, United Nations Environmental Programme, OECD, etc.)

PROVISIONS ON INTERNATIONAL COMMITMENTS

- > reaffirms international commitments
- > best ('sustained') efforts to ratify further ILO conventions
- > measures must respect international commitments of parties
- > efforts toward reducing obstacles to trade and investment for goods and services particularly relevant to climate change mitigation and in particular trade and investment in renewable energy and related services

THE RIGHT TO REGULATE

- > reaffirms right to regulate
- > upholds the level of protection
- > cannot deregulate to promote trade and investment
- > measures must respect Article XX GATT requirements (non-discriminatory, necessary to pursue legitimate objective)
- > precautionary principle
- > proper implementation and enforcement mechanism
- > transparency rule

Laura Puccio and Krisztina Binder, *Trade and sustainable development chapters in CETA*, European Parliamentary Research Service, Briefing (January 2017)



4. Two perspectives on CETA

“Devil’s advocate”

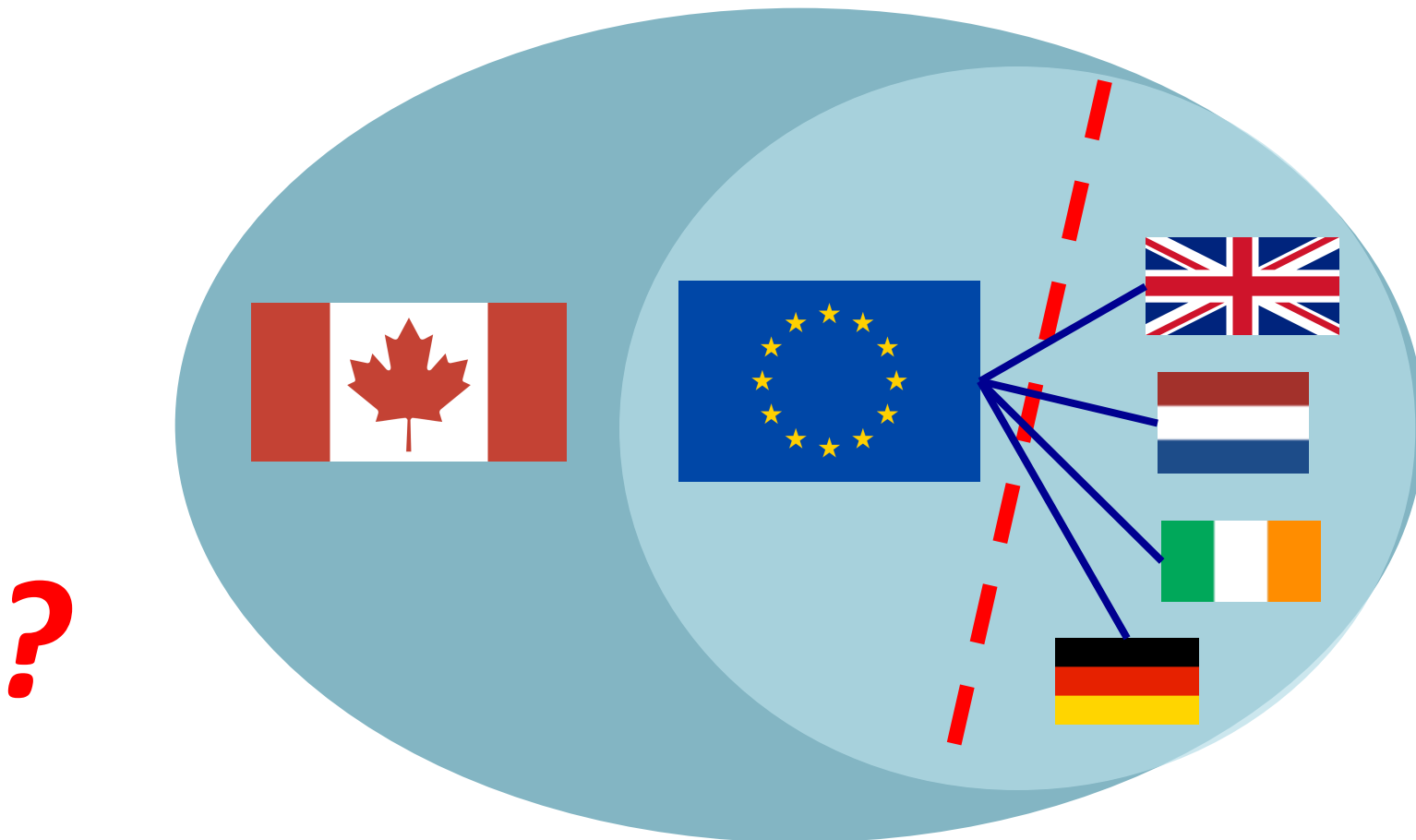
- Sustainable development commitments hortatory
- SD contained in chapters to which regular dispute settlement does not apply
- SD not linked to ISDS clearly enough
- Mostly run by experts and gov’t officials
- No sanctions

“Alternative Devil’s advocate”

- Most vocal FTA about SD yet (incl. precautionary principle)
- Aspirational provisions require legislative and executive action, multilateral cooperation
- ISDS chapter very clear about “right to regulate” and lack of review powers
- Joint Interpretive Declaration provides “even greater certainty” & possibility of future interpretive statements



5. CETA and “Brexit”





6. Conclusion and Outlook

- **Result of a long negotiation process, including civil society criticisms and subsequent amendments, providing actual “greater certainty” and (arguably) acceptance**
- **Long road ahead for ratification, but provisional application in sight**
- **Vocal commitment to sustainable development, but only implementation/practice will be “proof of the pudding”**
- **Two troublesome disconnections:**
 - ***Then:* Trade negotiators/lawyers vs. civil society**
 - ***Now:* Advocates of “comprehensive trade agenda” vs. advocates of “quick trade deals” & “protectionism”**



Thank you!

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Latest publications:

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