

The Consumer Voice in Europe

CETA FAILS THE CONSUMER CRASH TEST

BEUC position on the EU-Canada Comprehensive Economic and Trade Agreement



Contact: Léa Auffret – lea.auffret@beuc.eu

BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • consumers@beuc.eu • www.beuc.eu
EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2016-045 - 12/05/2016

Summary

- Trade liberalisation has the potential to benefit consumers where it leads to the promotion of a sustainable economy. **BEUC is in principle supportive of free trade agreements** as long as they are well designed and deliver benefits to consumer.
- We expect from CETA that it benefits consumers in protecting and enforcing their rights in a globalised market. It should at the same time **not impede opportunities to enhance protection in the future**. A good CETA would increase consumer welfare by reducing prices of products and services, offering more choices and bringing tangible benefits.
- **Unfortunately CETA fails the consumer crash test**. The concluded agreement does not meet the criteria of a trade agreement with a focus on consumer welfare. Despite positive components, such as a voluntary cooperation on future regulatory cooperation, the agreement still contains provisions that could undermine current and future levels of protection for consumers.
- Under **CETA foreign investors will be able to claim compensation for public policy measures, including consumer protection**, which frustrate their investment expectations. Although the European Commission secured last-minute changes to the investment protection chapter they do not address our key concerns¹.
- Parties claim that the agreement will lead to reductions of consumer prices. According to estimates they are marginal at best². And it is not only a question of price: **CETA misses the opportunity to deliver tangible benefits to consumers**. For instance, parties originally had the ambition to provide after-sales information and remedies for EU and Canadian consumers. This is not part of the final agreement.
- BEUC would potentially have supported a better designed CETA. The fact that the CETA negotiations were not transparent has a significant impact on our position as it prevented us from providing constructive recommendations during the negotiations. It highlights that **transparency along with involvement of public interest organisations** during trade negotiations are **key to ensure that trade can deliver**.

¹ BEUC key concerns about the Investment Court System: http://www.beuc.eu/publications/beuc-x-2015-103_beucs_key_concerns_about_the_investment_court_system_proposal.pdf

² Joint EU-Canada study of 2008 : http://trade.ec.europa.eu/doclib/docs/2008/october/tradoc_141032.pdf.

Why CETA fails to meet consumer expectations

BEUC is in principle in favour of free trade agreements, as long as they are well designed. We expect trade deals to uphold current and future levels of consumer protection and to bring them tangible benefits.

CETA intends to **reduce prices** for consumers and give them **wider choices**. At the time of writing the economic evidence for this promise is still missing. Moreover, **CETA misses the opportunity to bring tangible benefits to consumers** such as information requirements about what to do when EU consumers buying a Canadian product or service encounter a problem (such as non-delivery). It is also a missed opportunity that CETA is silent about remedies for consumers when they face problems with cross-Atlantic purchases.

On digital issues the final agreement, in terms of consumer protection, only foresees a bilateral dialogue to minimise spam. CETA should also have sought to **reduce telecom prices for consumers** including roaming fees and to **reduce geo-blocking practices**. In addition, we are not convinced by the solidity of the data protection safeguards. There should be a clear exemption of existing and future EU rules on the **protection of personal data** from CETA to effectively protect the privacy of EU consumers.

CETA nevertheless contains positive elements that could benefit consumers such as a **voluntary dialogue** between EU and Canadian regulators. There are interesting provisions regarding **pharmaceuticals** with a system of information sharing between regulators and alerts regarding good manufacturing practices of medicine production. The sanitary and phytosanitary chapter of the agreement also contains good provisions. For instance the primary objective is to protect human health while facilitating trade and not the other way around. In addition CETA plans a cooperation on **food safety** that could enhance consumer welfare. However, the **precautionary principle** could have been better protected by including stronger legal references in the text, also in other chapters of the agreement such as financial services.

In CETA the EU is opening the access to its market for Canadian service providers by following a **negative listing approach**³. This is a complete change of method compared to the traditional positive approach used in the multilateral trade framework. The positive approach, i.e. a closed list of which sectors a party wants to liberalise, is a more careful approach because it preserves the ability of the parties to progressively decide what they want to liberalise. It was intended to protect the right to regulate in the future. This is particularly important in a world where services are constantly evolving or new ones emerging. We regret that the EU has not evaluated the impact of such a change of method on future consumer protection.

³ A negative listing of commitments implies that services not listed are considered liberalised. The Commission has not provided an impact assessment of the shift from positive to negative listing on the right to regulate. We are concerned about the potential impacts on consumers notably when it comes to services that do not exist yet.

We acknowledge that the original investor-to-state dispute settlement chapter has been improved. Its **new investment protection provisions** now contain elements of the proposed Investment Court System. Although some critical points of the procedures of the old system have been tackled, the changes still do not alleviate our concerns. Foreign investors can still claim compensation if they feel that their investment could be affected by a public policy measure. This could deter the EU and its Member States, in order to avoid a challenge from a foreign investor, from adopting a necessary consumer protection measure in the future. The system is also still prone to conflicts of interests as it fails to guarantee real independence of members of the court who can still work as corporate lawyers. Above all, there is no need for such parallel judicial system between the EU and Canada as they both have strong legal systems that can protect foreign investors. CETA is supposed to be an ambitious 21st century agreement. As such it should have found the right balance.

Despite our traditional support for trade liberalisation, as consumers in the past have widely benefitted from the abolition of tariffs, we come to the conclusion that CETA fails to pass the consumer crash test⁴. **This agreement does not meet BEUC's expectations from the perspective of an ambitious consumer policy.**

⁴ See our consumer check list in annex page 4

Annex : The consumer check list for CETA

<p>Offers reduced prices and wider choices</p>		<p>The impact assessment study published prior to the launch of the talks anticipated that CETA could result in marginally reduced prices for goods and services and wider choices for consumers. The most significant gains would be on fishes, seafood, bison meat and transport services. <i>However these reductions will not necessarily materialise automatically</i> but will depend upon several underlying factors including the competitive pressure on market participants. The transmission of benefits to consumers from lower prices will not be automatic.</p>
<p>Delivers adequate and tangible benefits to consumers</p>		<p>When talks were launched, there was an ambition to provide for information requirements for consumers about their options if something goes wrong after a purchase of a good or a service originating from the other side of the Atlantic. It is not included in the final text. There is no ambition to reduce telecom prices or geo-blocking practices either, only a dialogue on spam.</p>
<p>Creates a voluntary dialogue between regulators to enhance consumers' level of protection</p>		<p>The objective is to allow EU and Canadian regulators to talk to each other, if they wish to do so, about regulatory measures (SPS, TBT, goods and services) in the framework of a voluntary regulatory cooperation forum. A cooperation on the safety of consumer products is planned (RAPEX/RADAR).</p>
<p>Upholds EU food safety and labelling standards</p>		<p>The aim in CETA is to protect human health while facilitating trade and not the other way around.</p>
<p>Ensures health safety standards and protect consumer's access to medicines</p>		<p>CETA includes positive provisions on good manufacturing practices for pharmaceuticals with recognitions of equivalence for some products. We see also interesting provisions on information sharing and alerts. Cooperation on chemicals is not included in CETA.</p>
<p>Upholds the EU data protection rights</p>		<p>We are not convinced of the solidity of the data protection safeguards in the e-commerce, financial services and the exceptions chapters. There should be a clear exemption of existing and future EU rules on the protection of personal data from CETA to effectively protect the privacy of EU consumers.</p>
<p>Makes sure that public policy measures will not be threatened by foreign investors' claims</p>		<p>The new version of the investment protection chapter is better than the previous 2014 version (including an ISDS system). It includes elements of the Investment Court System proposed by the Commission last year. However, the proposed investment protection chapter does not sufficiently protect the right to regulate and still holds broad substantive rights to claim compensation from investors. Also, it does not entirely tackle the issue of conflict of interests of arbitrators. Special privileges for investors are not necessary between the EU and Canada as both of our legal systems are sufficient to protect foreign investors.</p>



This publication is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).

The content of this publication represents the views of the author only and it is his/her sole responsibility; it cannot be considered to reflect the views of the European Commission and/or the Consumers, Health, Agriculture and Food Executive Agency or any other body of the European Union. The European Commission and the Agency do not accept any responsibility for use that may be made of the information it contains.