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by Robert Hage
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POLICY UPDATE

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Former Ambassador and Director General Europe, Global Affairs Canada
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It's a funny old world," Margaret Thatcher once said. After initiating and engaging in seven years of negotiation to finalize the Comprehensive Economic and Trade Agreement (CETA), what the European Union has called the "best and most progressive trade agreement the EU has ever negotiated", Canada faces an Agreement in peril.

The threat to reject the Agreement is not from protectionists in Canada but from EU member states responding to domestic anti-globalization and nationalist forces. In the face of Donald Trump threatening to "tear up NAFTA", Hilary Clinton changing her support for the Trans-Pacific Partnership, and Britain voting to leave the EU, both Canada and EU leaders are working feverishly to save CETA and demonstrate that trade liberalization has a future. Both sides are asking "if the EU can't get a trade agreement with liberal, like-minded Canada, who can it get agreements with?"

Since Prime Minister Pierre Trudeau's 1976 "Third Option" to lessen Canada's economic dependence on the United States via Europe, various Canadian governments have tried to develop closer economic ties with the European Union. A Canada-EU Summit to sign CETA with Prime Minister Justin Trudeau and the EU President is tentatively scheduled for October 27 in Brussels. Success is not yet guaranteed.

Throughout its history, Canada, with its relatively small population and massive landmass, has always been a trading nation seeking larger markets. Trade policy, however, has been politically divisive and the subject of national debate: Macdonald's 19th century "National Policy" kept high tariffs on US imports in the face of Laurier's opposition; Bennett advocated for Commonwealth Preferences which King opposed, and Mulroney and Turner fought over a Canada-US Free Trade Agreement.

It is said that Canada is the only Western democracy that has had an election on trade. The 1988 election focused on free trade with the United States; it saw Mulroney triumphant and Turner resign. In recent years, albeit with concerns from some protected industries, trade liberalization has not been the subject of national debate in Canada.

The European Union was built on the concept of free trade among its member states. Jean Monnet was called the "Father of Europe" for conceiving a post-war European Coal and Steel Community (ECSC), which would make the traditional belligerents, France and Germany, interdependent in a common market for coal and steel. Its aim was "to make war not only unthinkable but materially impossible".

The ECSC led to the 1957 Treaty of Rome six years later and the establishment of the six-member European Economic Community, now the 28-member European Union, built on four freedoms: free movement of goods, services, capital, and people. Monnet saw that the European states' attachment to national sovereignty could be, as his deputy Robert Marjolin said, "modified in the pressure chambers of new institutions". In a 1952 speech focused on the union of Europe, Monnet said: "The life of institutions is longer than that of men: if they are well built, they can accumulate the wisdom of succeeding generations."



With liberalized trade as a founding principle, it is not surprising the EU has 30 trade liberalization agreements in place covering over 60 partners, as well as 7 more concluded agreements in various stages of ratification covering 31 countries, and is working on almost 20 other agreements, including CETA, that cover more than 50 states. The surprising thing, until recently, is that Canada was not one of this number. EU Trade Commissioner Cecilia Malmstrom told Austria's Parliament on September 14 that "the real value of CETA is that it will integrate Canada, one of the world's most important economies, into this wider network we are building".

The initiative to launch the recent round of trade negotiations with the EU did not come from the Federal Government but from a Provincial Premier, Quebec's Jean Charest who toured Europe in early 2008 calling for Canada-EU free trade. He won the support of a key country, France. The Harper Government took up his initiative and met the EU's one caveat: that the provinces have to be part of the negotiations in areas under their jurisdiction (a first for a Canadian trade negotiation). After a year of joint study and internal consultations with stakeholders, negotiations for a Comprehensive Economic Trade Agreement (CETA) were launched at a Canada-EU Summit in Prague in May 2009.

While Canadians and Europeans have worked together for decades in both war and peace, there is something else that binds Canada to the European Union: Jean Monnet. As the Norwegian scholar Trygve Ugland documents in his book, *Jean Monnet in Canada: Early Travels and the Idea of European Unity*, Monnet spent a good part of his formative years, from 1907 to 1914, in Canada as a salesman for his father's Cognac firm. Monnet travelled the breadth of western Canada and his efforts resulted in the Hudson Bay Company designating Monnet Cognac as its exclusive supplier for brandy from Lake Superior to Vancouver Island.

But Monnet, a keen observer, learned more than how to sell brandy. In his *Memoires*, he recounts how he observed trainloads of immigrants arriving in Winnipeg: "They were not refugees: they were not starving. They had come to hard, rewarding work – the conquest of new lands... No one thought about limits; no one knew where the frontier was...Here, I encountered a new way of looking at things: individual initiative could be accepted as a contribution to the general good."

For Ugland, there is a relationship between Monnet's encounters with Canada and Canadians and his subsequent political project of uniting Europe. He sees how Monnet's Canadian experiences inspired and spurred him to promote European political integration throughout his entire career. "Canada became a source of creativity", he writes, "both as an inspirational model and as a guiding reference for him in times of turmoil and conflict."

Ugland finds that "patience, compromise, and tenacity" were key virtues in what he calls the curriculum of Monnet's Canadian School of Experience. All those virtues were required for the CETA negotiations, which went on from 2009 to 2016—longer than it took to form the European Economic Community. And during that time, attitudes towards trade liberalization in our "funny old world" have changed significantly. Over the past year, demonstrators have taken to the streets in different parts of Europe, notably Belgium, Germany and Austria to protest CETA, or rather CETA and its EU-US equivalent, the Transatlantic Trade and Investment Partnership (TTIP)



which is still very much under negotiation. On a number of occasions Commissioner Malmstrom has stated, “Canada is not the United States, in spite of geography or its ties to that country”. In fact, she says Canadians are as European as possible without being European. They share our values and our interests.”

The reasons for opposition vary but seem to be centered on globalization and seeing CETA as a stalking horse for a more complex and controversial deal with the USA, the world’s largest economy. This is coupled with growing income inequalities, seemingly uncontrolled migration threatening jobs and a sense trade agreements can undercut national public health, education and welfare. And it has not been just civil society expressing concerns. Over the past two years, 9 member states or sub-national parliaments expressed concerns about CETA largely focused on the Agreement’s investment dispute provisions which they argued gave too much power to arbitral tribunals to override national laws.

Financial Times columnist Martin Wolf asked in an August 30 article entitled “Capitalism and Democracy: the strain is showing” whether the marriage between liberal democracy and global capitalism is an enduring one. He says with the candidacy of “an authoritarian populist for the Presidency.... One cannot take for granted success of the political and economic systems that guide the western world...” .

This year, the EU and Canada faced an unexpected challenge: how to save the Agreement which, with the proposed EU-US Transatlantic Trade and Investment Partnership, drew an estimated 320,000 protesters to streets across Germany in mid-September. In one sense, CETA was Canada’s and the EU’s agreement to lose. The two parties announced the conclusion of negotiations in 2014 and sent the text for legal review and translation into the EU’s 24 official languages.

It subsequently transpired that negotiations on the contentious investment protection provisions continued in private. After a year and a half of silence from the top, EU leaders and Canada received a wake-up call from the streets and member state parliaments. In the words of Germany Vice Chancellor Sigmar Gabriel, “The demonstrations helped us by drawing our attention to what’s at stake.”

Canadian and EU leaders listened and reacted. Amending the investment provisions to abolish private arbitration tribunals in favour of an investment court “based on the rule of law” was a very positive step forward. On September 19, Canada’s Trade Minister Chrystia Freeland and Vice Chancellor Gabriel, who is also the chairman of the Social Democratic Party (SPD), issued a joint statement following the SPD’s endorsement of CETA at their party conference.

This endorsement was crucial to CETA’s future since it signaled that both Chancellor Merkel’s Christian Democrats and the Social Democrats were in agreement. Germany is now in a position to champion CETA in the run-up to the crucial October 18 EU Council of Ministers meeting which will take the formal decision on whether or not to sign the Agreement. The decision on signature will be taken by consensus meaning that no member state can object.



In their statement, Freeland and Gabriel agreed to adhere to the “core principles” which underlay the CETA negotiations. These included shaping globalization and deepening economic cooperation so that modern trade agreements contribute to shared values, such as governments’ role to protect and develop social and environmental standards, and provide a high level of protection for consumers, workers and the environment. They concluded by stating that “trade policy is meant to serve, and be accepted by society as a whole”. It is noteworthy that they added, “we have heard the concerns expressed by the German Trade Union Federation and the Canadian Labour Congress.”

The statement will also serve as the basis for one more text, a legally binding Canada EU Declaration to be attached to the Agreement. Freeland and all the EU trade ministers agreed on September 22 to draft a “clarifying declaration” that will explain in more detail what critics say is vague language in CETA which poses threats to the quality of public services, the ability to regulate environmental or working standards as well as the use of the investment court system, worker’s rights and environmental standards. The Declaration will be released at the time of the October 18 Council of Ministers meeting.

In selling CETA, both Canada and the EU have been at pains to underline that it is more than a trade treaty between states. They stress it is an agreement which will benefit their citizens on both sides of the Atlantic generating growth and jobs, creating “a level playing field” for large and small companies (with a heavy emphasis on the latter), cutting custom’s duties, helping rural communities, opening new markets for innovators and protecting worker’s rights and the environment.

EU officials believe the outreach to moderate centre-left politicians and unions, the modifications and clarifications to CETA, and the fears a negative vote will fuel extreme right anti-immigrant/anti-free trade sentiment will achieve consensus in the Council of Ministers to sign CETA. If this is achieved, the treaty will be sent to the European Parliament for ratification likely in January or February 2017. The Parliament’s centrist parties are expected to have enough votes to endorse the Agreement.

The Council will include provisions on the “provisional application” of the treaty. As part of its move to “democratize” CETA, the European Commission agreed CETA would be a “mixed agreement” giving the 28 member states, as well as the European Parliament, a role in the ratification process. Minister Freeland believes this would comprise only about 10% of the treaty with member state responsibilities likely confined to investment and financial services issues.

It could take all the member states several years to ratify, however, the 90% of the Agreement’s provisions related solely to the Union’s competence can be applied provisionally, immediately after the European Parliament’s ratification. EU Trade Commissioner Malstrom said that over 98% of EU and Canadian customs duties will be abolished from day one of provisional application.

Canadian and EU leaders are already referring to CETA as “a progressive, new generation trade agreement”, which not only eliminates tariff and non-tariff barriers, improves access for service industries, and encourages investment but also enshrines labour and environmental rights, the



role of public services and the right of states to regulate. Indeed, Minister Freeland sees the Agreement, initiated and largely negotiated by the Conservatives and now championed and implemented by the Liberals, as a "gold standard agreement" that will be a model trade deal for the rest of the world. The world will be the judge, but finally Canada seems to have achieved its own, bipartisan trade voice.

A few final, visionary words from Jean Monnet. In a 1961 article entitled "Western Unity: The Cornerstone of World Peace", Monnet proposed creating a far-reaching 'Atlantic community' composed of European nations, together with Canada and the United States. Wouldn't the brandy salesman from Cognac who cut his teeth in Canada be pleased to see CETA as a step in that direction?

► About the Author

Robert Hage teaches a course on Modern Diplomacy at the University of Ottawa and was a Canadian diplomat for 38 years, notably as Canada's Ambassador to Hungary and Slovenia, Director General for Europe and Director General for Legal Affairs. He also served in Canada's Embassies in Washington, Lagos, Paris and as Deputy Head of Canada's Mission to the European Union in Brussels. In Ottawa, Bob was also Director of four divisions including International Financial and Investment Affairs and relations with the European Union. He was Principal Counsel for the Canada-USA Free Trade Agreement, Counsel on the Environmental Side Agreement to NAFTA and representative for Canada at the UN Conference on the Law of the Sea. Bob is a graduate of University of Calgary and obtained law degrees from the University of Toronto (LL.B) and University College London (LL.M). He also attended the École Nationale d'Administration (ENA) in Paris.

► Canadian Global Affairs Institute

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