CETA: unfair on all counts for the CGT

Statement on the CETA package signed October 30th 2016

Following unaccustomed dealings between European institutions and the member States, the Comprehensive Economic and trade Agreement (CETA, or AÉCG[1] in French) between the European Union and Canada was signed and is now submitted to the parliaments' ratification.

The difficulties having caused the signature to be postponed, once again shed light on the major dysfunctions in the conduct of the European commercial policies. First, the absence of transparency in the negotiations makes it impossible for all legitimate and democratically competent players to go along the process, and they are left out to make a decision after the game was played, on a text which cannot be amended anymore: the Walloon parliament precisely exercised the democratic supervision, for which it is mandated. Second, it is obvious that the political line to pursue isn't unanimously embraced by all member states and the European Commission.

Since then, the signature process has begun in the European Parliament. The procedure is blatantly conducted in an extremely hasty manner, a dark echo reminding the French of the repeated 49.3 this year. In any case, MPs accept that there still will be no transparency on the CETA; there will be neither real debate nor publicity on the stakeholders' respective positions. Additionally, no civil society bodies, trade unions nor experts will be heard. The CGT expects the European Parliament to seize its full role as democratic representative of the populations and the workers in Europe. It is not behaving likewise today.

The very contents of the agreement spill widely over and outside the scope of commerce. The choice of dealing with non tariff barriers, i.e. technical and social regulations in particular, as well as investments, means this is no agreement for a free trade zone, but for a common market indeed.

That's where the flaw lies in the European Commission's fundamental political and commercial goal: a receding of State intervention and propelling of the market, meant to self regulate. We know how lame this neoliberal ideology is, both economically and politically.

The CGT fights for international cooperation, international exchange of goods and services, and the mobility of persons. Being open to the world brings a wealth of benefits, allows fruitful contacts. It fosters intensified exchanges and thus, rules are needed to ensure that the riches benefit all, in a fair way. This globalisation is a chance, and serves workers in particular. We must shape it and have our impact on it, to feed-in the meaning we see in it. In this endeavour the CGT brings forth propositions.

However, we cannot fail to see how the commercial policies conducted by the European Commission with a perfect connivance from the French government, are dragging the workers in a mire where they *suffer* globalisation and are victimised by it. That globalisation fosters threats and real regress.

Unfortunately, the CETA is a translation of this approach. The all-market is sewn across the agreement like a guiding line. The State in its will to regulate must recede on all fronts, as if the target of hostility. The background philosophy of liberalisation is a constantly constrained force-

[1]Accord économique & Commercial Général

feeding of private economy so it grows into the public services domain. It is maiming the State in its role as a protector of the weak and of the common good.

The early analyses of the CETA's economic impact, give rise to strong doubts as to any of its potential benefit. In terms of employment, destruction is more likely than creation. As for the GDP, the CETA's influence is infinitely small. The only certainty, concomitantly observed in the studies, is that the CETA will cause inequalities to soar in Europe. In other words: the economical argument of the CETA is non-existent.

In parallel, its terms on labour laws are insufficient, inoperative and totally unbinding: a mere recommendation, they are a pale reference to the ILO basic standards even though the robustly crafted set of updated ILO tools would allow much more comprehensive dispositions. The field of collective rights is totally absent. There is no formulated guarantee for workers' representative bodies in transnational companies. Meanwhile, the same agreement has a chapter on investment which is bound to fulfil its aim of restructuring, relocations, the merging-acquisition of companies and production sites. This omission will be heavy toll for thousands of workers who'll fight for their jobs. Even worse, labour laws are now subjected to regulatory cooperation, a huge pressure that threatens to further dislocate the labour code.

The CETA in its current shape of ratification is crossing all the lines which the CGT set[2] since the beginning of negotiations:

1. Labour rights, both collective and individual, are not binding, and as "agreed" they are a wide gateway to social dumping and blackmailing on working conditions;
2. Foreign investors are granted huge guarantees which are denied to national investors, in a background of no-guarantee for workers' rights. Once enforced, the agreement will cause a draft or air fuelling relocations, restructuring and other LBOs ;
3. Public services are not exempt from the agreement field of application. The blacklist method makes the rules acutely difficult to understand and exerts on the public sector an unacceptable pressure toward liberalisation ;
4. The precaution principle is not effectively guaranteed in the agreement. Only one goodwill declaration is contained in the 'Common Interpretative Instrument' appended to the agreement ;
5. Regulatory cooperation is one additional threat burdening the labour rights which are included in the scope of application. As for the other rules, respect for general interest is not even mentioned in the text ;
6. Public markets are totally handed over to neoliberal frame, and will exert an unnecessary pressure on working conditions and wages;
7. Interim implementation will enforce most of the agreement, without a chance for national parliaments to examine the text. The ultra speed-up procedure in the European Parliament bypasses any democratic debate.

The Common Interpretative Instrument, signed along with the agreement itself, unfortunately does nothing to mitigate this state of things.

[2] *Cf.* summary in the appendix.

Unless modifications take place of these items, at the least, the CGT can only oppose the ratification, interim implementation and final entry into force of the CETA. We call citizens, workers and MPs to reject the Comprehensive Economic and trade Agreement between the European Union and Canada.

Montreuil, November 28th, 2016

Appendix[3]

Items for the appraisal of the CETA by the CGT

First, we must pinpoint that here is an international treaty which scope is far wider than international commerce: it is a tentative setup of a transatlantic common market. To assess it as one more « simple » free trade agreement would be misleading about what is really at stake.

Second, it's an international agreement, i.e. its legal value will overrule that of the French Constitution.

The CGT drew some "red lines" not be crossed, which it brought into the ETUC and ITUC debates. These positions allow to evaluate the « package » under the light of union demands.

Economic Impact

The European Commission and Canada published in 2008 a joint study praising the positive economic benefits on both partners' GDP[4], a surprising outcome coming from the concerned parties themselves. This was eight years ago, before the major economic downturn that has hit Europe ever since. This study has been criticised for a number of methodology flaws. For instance, the study is based on full employment and the absence of relocation of production sites– which is contradicting a further chapter on investment (see below)!

Other studies, whether independent or commissioned by unions, have much more mixed outcomes. A study from the US Tufts University (neither European nor Canadian), published in September 2016, observes, among other things, a redistribution of the added value in favour of capital, a slowing down of wages progression, the destruction of jobs (at least 45.000 in France) and a GDP recess. All of which increase inequalities. In parallel, a shift in the intra-European balance would appear. In short, the direct impact of such a treaty would cause more pressure on wages and working conditions.

The conclusion of the study commissioned by the Austrian ÖGB and published in August 2016, contains, for the best case, some mild positive effects, 10 to 20 years from now: in France, 0, 02% jobs would be created, wages would increase by 0, 01% (but coming with major salary cuts for the lowest skills and a strong pay rise for the management), as well as a redistribution of the added value in favour of capital.

Given the infinitely small impact of these effects, it will probably be difficult to distinguish them from other factors (climate, exchange rate variation, or even, the Brexit). . The CETA's economic benefits are far from being demonstrated!

First red line: binding labour laws

Of course, for the CGT, labour laws[5] are central when it comes to evaluate the CETA:

[3] Text validated by the BC on November 21st 2016.

[4] Concretely, the projection shows a European GDP increase from 0,003% to 0,08% , at 10 years. That is, an infinitely tiny figure !

The unions demand that labour laws dispositions be binding, and that violations be subject to sanctions	***NO***
That all the updated ILO instruments be considered (and not just the fundamental standards)	***NO***
Foster a real cooperation and share of competences between the WTO and the ILO	***NO***
Guarantee of workers' collective rights (so they can defend their interest against the possibilities offered by the Investment chapter)	***NO***

This goes along with an access for capital, management and administrations to binding measures against workers, so the picture is complete!

Second red line: protection of (foreign) investment

First, «foreign investment» in the context of international commercial policies, is a euphemism to be translated as: purchase of equities, share repurchase, LBO, merging-acquisition, or relocation of companies or production sites. The aim of the investment chapter in a commercial agreement is to encourage and facilitate foreign investment…

The European Union and Canada have effectively modified the appeal procedure (the famous ISDS) to replace it by an international court system (« ICS »). Nothing, yet, has changed in terms of guarantees to foreign investors: unlike local investors, they can turn to the international court to settle dispute, which isn't accessible to local investors. Thus, they can appeal to decisions from administrations and governments unsuitable for their interest. Furthermore, there is *no* obligation for the beneficiaries of these guarantees: those advantages are granted for free to foreign investors! Appeals are a possibility for multinationals to contest decisions in the fields of tax, social and administrative laws; this is totally impossible for national investors and citizens. Thus they can exert pressure on political decisions.

Wallonia announces that it shall not ratify the CETA with such an ICS, and that it will appeal to the Court of Luxembourg.

If the modification of the procedure (ISDS replaced by ICS) brings about more transparency on multinationals' deeds, the essence of the problem remains whole, and unsolved.

Other than the clear and firm contest by European lawyers questioning the lawfulness of this process, at the heart of the matter it is impossible to justify such advantage granted to capital without trade off, exposing the workers to even more contingencies from the capital.

Third red line: to protect public services

The CETA exposes public services to the pressure for privatisation, with their «blacklist» method. Trade unions demanded to ban this method, and to create a list only containing sectors open to competition. There is no progress on that item.

Public services are left exposed, in particular with the danger of dispute settlement appeal for foreign investors. As for cultural services, Europe and France chose to protect only the audio-visual sector, thus leaving out the book publishing industry, the printing industry, sheet music printing, etc.

[5] Labour laws remain a national competence. The French National Assembly must under no circonstance accept this CETA chapter, as provisioned.

Combined to the administrative simplification (REFIT for the European Union), the CETA also exposes sectors of the public administration (ex. customs) to restrictions.

The CETA is at heart, an "all-market" preaching text; it endangers the public services as a whole.

4e red line: affirm and protect the precaution principle

The precaution principle, defined in the European Union treaties, is the essential backbone to protect consumers, citizens and workers in Europe. The whole legal fabric takes it into account (appeal procedures for dispute settlement, insurances, criminal laws etc.).

The CETA, whilst reluctantly stating it would not put it into question, fails to even mention it in the regulatory cooperation chapter. Thus, through the administrative simplification terms, the precaution principle is threatened. The interpretative Instrument makes no difference.

5e red line: regulatory cooperation

In the present context where the French government and the European Commission preach the regulatory simplification (or REFIT), the chapter on regulatory cooperation is especially sensitive.

The unions demanded, in particular, that the domain of labour laws be removed from the domains covered by the regulatory cooperation. This did not happen.

The CGT expressed the following demands:

a) To submit regulatory cooperation to democratic control and transparency requirements ;	*Unclear*
b) Exclude the fields of labour and social rights from the competences in chapter 21 ;	***NO***
c) Foster the existing bodies for multilateral regulatory and normative cooperation;	***NO***
d) Explicitly assert the precaution principle;	***NO***
e) Pinpoint the primacy of social and labour interests in case of conflict with economic, financial, or industrial interests ;	***NO***
f) Add to the domains evaluated by impact assessments, the social and labour dimensions, and not just financial and economic efficiency;	***NO***
g) Assert the obligation of result in terms of protection, instead of being satisfied with mere goodwill declarations.	***NO***

The regulatory cooperation as set in the CETA, endangers the protection of workers and consumers. It threatens to compromise the precaution principle.

6e red line: Public Markets

With regards to public markets, the CETA corresponds to the philosophy of opening markets elsewhere rather than protecting local ones. Thus public markets are open to companies from across the Atlantic. Consequently, competitors being subjected to different social conditions and different job market can compete with local companies. This increases the pressure on wages and working conditions.

Although the interpretative instrument formally guarantees the possibility to demand qualitative terms in public markets (respect of collective agreements, minimum wages, subcontracting chain,

etc.), the CETA nevertheless specifies that these criteria must be « necessary » ones, and should lead neither to «unfair discrimination» nor to «disguised commerce restriction».

The dispositions on public markets contribute to put workers from both sides of the Atlantic under pressure and in competition, without offering any additional protection.

7 red line: Interim implementation

The CETA is a mixed agreement, a painful concession from the European Commission to the European Council. This means that even if national ratifications are needed for matters within the competence of member States, the sectors under the exclusive competence of the European Union can be implemented as interim as soon as the European Parliament ratified the agreement.

Trade unions expressed their disagreement against interim implementation. It means that national parliaments will only be involved in matters of their national competence. Second, interim implementation at European level is a huge pressure against national decision-makers.

The matter was brought to the European Parliament in an extreme, fast-forwarding procedure to ratify the agreement and thus, bypass any consultation or broad hearing of citizens, civil society and unions.

Common interpretative Instrument

The so-called CII is written in a rather political style, not so legal. It was meant to be the answer to the criticisms voiced by the ETUC and the Canadian CTC. Although the European Commission declares that it has a legal value and that it must be considered when the CETA body of text is interpreted by court judges, in case of contradiction, the text body will prevail.

The European Commissioner for external Trade, C. Malmström, stated in front of the ETUC delegation[6], that the European Commission legal services took care and made sure the CII didn't contradict the CETA body of text…

[6] Cf. ETUC report of the October 28th 2016 meeting between Luca Visentini and Cecilia Malmström. The ETUC requested this appointment with the European Commissioner after the ETUC Executive Committee.