

The UK's 'Canada Option' just got even more difficult

Blog post by Partner Stephen Adams, 05 July 2016

There are reports today that the European Commission is on the verge of declaring the EU-Canada CETA a mixed agreement, paving the way for it to be ratified via national parliaments. This would be a big reversal for the Commission, which has fought a long battle over the Lisbon Treaty and what it does or does not do to restrict member state ratification rights in trade deals.

In this case it is more about principle and politics than content. Nobody really seems to think that CETA is a bad idea, even in the contentious area of investment protection. But it is the cuter, more amenable sibling of the much more politically toxic TTIP, and its place at the front of the ratification queue made it a test case of whether member states were going to concede the Commission broader competences and tighter control of signing off trade deals. Sigmar Gabriel, among others, had made national ratification of CETA a key demand, and a precondition of a constructive forward approach on TTIP.

At one level this is a test of political wills that the Commission simply didn't have the firepower to win. Juncker has never been keen to spend political capital on trade deals and has never really signed up to DG Trade's push to carve out greater control over deals on the basis of new competences purportedly created by the Lisbon Treaty. He wavered on giving TTIP his full backing and has never done so with any enthusiasm. Taking on member state capitals after the Brexit vote with an insistence for more control from the centre on trade seems to be a step too far.

This creates some practical issues. Ratification could be slow coming. It will now probably involve national (and in some cases regional) parliaments. It took almost five years to push the EU-Korea FTA through this process. The Commission may seek scope to apply parts or all of the deal provisionally in the meantime, although this may very likely be opposed by national capitals.

It is also a reminder that a quick and dirty ratification of an EU-UK FTA would be improbable and the question of how quickly such a deal could be made operational is increasingly at the centre of how disruptive a UK exit from the EU might be. The CETA precedent the Commission may be about to set suggests there is another big obstacle to navigate on the road to a smooth Brexit.