

TRADING TOGETHER

For strong and democratically legitimized EU international agreements

25 January 2017

The complications surrounding the signing of the EU's comprehensive economic and trade agreement with Canada (CETA) have imperiled the ability of the EU to engage effectively in international trade negotiations. Some academics have endorsed proposals that would further weaken the EU's international standing (see for example the Namur declaration). While not prejudging the content of the policies to be adopted by the EU, we strongly believe that current procedures, when properly implemented, ensure democratic legitimacy for the EU's international agreements at multiple levels (going beyond what is known in federal countries like the United States). Arguments implying the contrary are most regrettable.

Analysis

- Based on the founding Rome Treaty of 1957 the EU has had exclusive competence over international trade policy. This allowed the Member States to benefit fully from the EU's combined bargaining power and to avoid the distortions inherent in diverging national policies. The decision to adopt a system of qualified majority voting enabled the EU to act effectively.
- This is how decision-making has worked according to the EU treaties: the Commission proposes initiatives for the negotiation of new international agreements; the Council of Ministers decides on them. Once this decision is taken, the Commission then negotiates such agreements, with the assistance of the Member States. Finally, the Council decides whether to sign and conclude them. The EU Member States remain involved in all these steps through their role in the Council.
- The Lisbon Treaty of 2007 belatedly involved the European Parliament in the conduct of the EU's international economic policy, by giving it the right of consent before the Council can ratify trade and most other agreements. Moreover, it was agreed that the Commission shall immediately and fully inform the European Parliament at all stages of the negotiations. Since then the European Parliament has made meaningful contributions in this field. It has shown that, if necessary, it will not hesitate to reject the ratification of international agreements, in particular when fundamental rights are at issue (ACTA – the Anti-Counterfeiting Trade Agreement; Swift agreement).

- As the EU matured, and international economic relations evolved, the EU's exclusive powers over international trade policy expanded – considerably so, as enshrined in the Lisbon Treaty of 2007. These exclusive powers also came to cover other economic issues, notably where the EU had legislated. Although not binding on the European Court of Justice, the recent Opinion of Advocate-General Sharpston on the EU-Singapore Agreement (2/15) is illustrative. She finds that most issues now included in comprehensive economic and trade agreements squarely fall within the EU's exclusive competence. Few issues are 'mixed' and belong to the shared competence of the EU institutions and the Member States in her Opinion.
- The recent insistence of national and in some instances regional governments to participate in their own name in the EU's conclusion of international economic and trade agreements disregards the principles established in the EU treaties. These attempts weaken the EU's position in international relations. They needlessly complicate and delay decision-making, as unanimity amongst many players becomes the rule -- also allowing a particular local interest to veto the interests of all other EU citizens even in areas where EU Member States have decided to act collectively. Moreover, these attempts undermine the role of the European Parliament, and by doing so weaken democratic legitimacy at the EU level.

Proposals

- Agreements covering issues belonging to the EU's exclusive competence should be clearly distinguished from so-called mixed agreements covering issues where both the EU and the Member states share competence. Each type of agreement should follow its own signing and ratification processes. Agreements that principally cover issues falling within the EU's exclusive competence should not be made artificially 'mixed'. The Court's ruling on the EU-Singapore Agreement (2/15) will be guiding.
- In respect of both types of agreements, more engagement by national as well as regional parliaments would be welcome in respect of the positions taken by their national governments. Where international agreements are concerned that involve the exclusive competence of the EU, particularly as this competence has grown, national and regional parliaments should engage more with the positions taken by their governments in the EU institutions, notably the Council of Ministers (regarding the negotiations, the signing, the provisional application and ultimately the ratification of the international trade agreements). Of course, national governments should make allowance for a proper discussion and distribute the necessary information, which they receive from the European Commission, to their parliaments.

- As the European Parliament represents the citizens of the Union, this Parliament has the mandate to test and debate the decision-making on the EU's international trade policy at the European level. It should give or withhold its consent to trade agreements on the basis of its views on European interests and values.
- All EU institutions should be transparent about the objectives they pursue through the EU's international trade policy, including their positions in respect of the EU's international trading partners.
- All private stakeholders (not just foreign investors) should have access to effective surveillance mechanisms regarding the compliance of the signatories with their obligations under these international trade agreements (including obligations on sustainability, environmental, social and health protection).

* * *