

BORDERLEX: CETA ratification: How the Dutch government hopes to win over parliament

30/10/2020 by [Nikos Lavranos](#) · [Edit this post](#)

A special notification mechanism for breaches of labour and environmental provisions could end up being the ‘magic trick’ that sways the Dutch parliament to ratify the EU’s Comprehensive Economic and Trade Agreement with Canada, reports Nikos Lavranos.

As in several other [EU member states](#), parliamentary approval of CETA in the Dutch Parliament has run into trouble. Early this year, the Lower or Second Chamber of the Dutch Parliament [approved CETA with a very narrow margin of 72 against 69 votes](#). This tight vote illustrates that all the opposition parties are – to varying degree – not satisfied with the final CETA text.

Now CETA has also to be approved by the Upper Chamber. However, the current government coalition lacks a majority in that chamber – it is thus very uncertain that CETA will receive a positive vote.

The Social Democrats of the PVDA – rather unexpectedly withdrew their support of CETA. They were in government at the time CETA was negotiated and signed it in 2016. Back then the responsible trade minister was PVDA-member Liliane Ploumen who stated back then had stated that the [“deal with Canada is a very good result”](#).

The Upper Chamber is clearly aware of the potential repercussions rejecting CETA and thus has taken extensive steps to prepare for its vote.

Two roundtable discussions with then EU trade commissioner Phil Hogan, Canada’s ambassador to the Netherlands Lisa Helfand, and Stéphane Lambert, head of trade policy at the Mission of Canada to the EU, as well as several Dutch professors in international, trade and EU law were organised on 12 and 19 May 2020.

Hogan, Helfand and Lambert obviously emphasised the benefits of the agreement and urged the Upper Chamber to approve it. Most law professors were very critical towards many aspects of CETA, in particular its [Investment Court System](#) and the environmental, health, labour protection and sustainable development provisions. Accordingly, most professors recommended rejecting CETA.

Subsequently, the Upper Chamber submitted no less than 185 questions to minister Kaag covering numerous aspects of CETA, in particular regarding the economic pros and cons for the Netherlands and the EU as a whole, the right to regulate, the impact on the agricultural sector, sustainable development, environmental protection, health and the ICS.

The minister's answers failed to alleviate all the concerns of the Upper Chamber.

What happens next depends on whether the Social Democrats will eventually lend their support to CETA in return for specific commitments from the trade minister.

The centre-left party is focusing its additional demands on strengthening the enforcement of the 'trade and sustainable development' chapters in CETA by the creation of a "notification mechanism" that would be established outside the existing CETA treaty framework.

This idea was launched by a [think piece from the Netherlands and France](#) on "trade, social economic effects and sustainable development" circulated in May this year.

The 'non-paper', how it is called, among others proposes "a more streamlined EU notification mechanism to respond to possible breaches of TSD commitments. Such a mechanism would facilitate the Chief Trade Enforcer's work on TSD. Moreover, the EU could incentivise effective implementation by rewarding partner countries that live up to TSD commitments".

Despite the fact that CETA's TSD chapters already contain specific state-state dispute settlement provisions, which enable a contracting party to initiate a procedure against another contracting party for breaches of the TSD obligations, this notification mechanism would provide an additional mechanism in which in particular non-governmental organisations – NGOs – could play a role.

Given that the CETA text has already been signed and ratified by several EU member states and Canada, it is impossible to modify the text, the proposed notification mechanism would indeed have to be established outside the treaty framework.

At the same time, the Franco-Dutch proposal refers to the Chief Trade Enforcement Officer ; a new position created by Commission President Von der Leyen and now held by Denis Redonnet. The CTEO's role will be to monitor trade partners' commitments under sustainable development chapters in EU trade agreements, conduct consultations over alleged violations of trade partners and, if necessary, initiate dispute settlement procedures under EU trade agreements.

The Franco-Dutch proposal does not explain how exactly the suggested notification mechanism would interact with the tasks of the CTEO. Indeed, there seems to be potential for significant overlap and duplication between the two.

In light of this lack of clarity, the Upper Chamber requested the trade minister to provide detailed information regarding such a notification mechanism, which would have to be worked out and proposed by the European Commission, before the legislature can discuss CETA any further. Following a debate in mid-October in the Upper Chamber, the majority decided to take the notification mechanism into consideration when voting on CETA.

Such a notification mechanism could be the magic trick, which – if considered robust enough to give NGOs a formal role in monitoring and enforcing CETA – would sway the Social Democrats into eventually voting for CETA.

Everything now depends on the answer Ms Kaag will give to the legislature, which in turn will depend on the willingness and creativity of the European Commission to come up with a convincing and robust proposal rather quickly.