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# Seizing the moment: regional opportunity structures and Wallonia's temporary veto of the EU-Canada bilateral trade agreement

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## Abstract

Constitutionally, Belgium represents the most extreme case of regional entities wielding power over EU external trade policymaking. Formally, the Flemish, Walloon and Brussels regions can wield veto power over Belgian positions. Yet, only once has a Belgian region actually made use of this capacity, when Wallonia temporarily blocked the conclusion of the EU trade agreement with Canada in 2016 (CETA). We show that political actors – legislative and executive – could only activate this constitutional possibility in conjunction with other necessary conditions: a high degree of societal mobilization and, above all, inter-party competition across different levels of government. As the Walloon Parti Socialiste seized the moment, it reinforced the paradox of weakness and strengthened the EU's trade bargaining power towards Canada. We finish by discussing the spill-over effects of the 2016 CETA episode into the shaping of future EU trade policies, as well as into future intra-Belgian EU policymaking.

## 1. Introduction

The temporary Walloon veto against the EU-Canada Comprehensive Economic and Trade Agreement (CETA) is commonly viewed as the expression of increased parliamentary control over EU external trade policy, fed by an increase in scope and depth of regulatory trade policy that has led to more contestation of trade policy more generally (Bollen et al. 2020). In this contribution, we show that such a view can only partially account for the phenomenon at hand and instead present a comprehensive explanation. We do so by analyzing a more complete set of necessary conditions for the surprising outcome of the temporary blockage. For one, we start by showing that at the EU level, institutional capacity for member states or regions to exert control over EU trade agreements has not changed in any consequential way. We go on to show that consequential change occurred at the subnational level, having introduced variation across European regional entities of which Belgian regions are only one set, albeit of an extreme kind of institutional capacity. Finally, and crucially, we show that different party constellations in regional and federal governments are an additional crucial condition for veto use and effective influence over trade policy outcomes in the EU, hereby taking cues from Tatham (2018) and Broschek et al. (2020) who also point to the party-political factor.

To gauge the potential consequences of institutional change on the subnational and the supranational level, it is important to carefully specify these changes. First, the Lisbon Treaty only formalized the *de facto* competence of the European Parliament (EP), which as of 2009 includes the initiation and the ratification of EU trade agreements (Van der Loo and Hahn 2020). The Treaty extended the scope of matters falling under exclusive competence of the

EU, subject to qualified majority voting in the Council and an absolute majority in the EP, but it did in no way fundamentally change the role of member state parliaments in EU external trade policy. This is so because member states always have the possibility to include matters of mixed competence in their negotiating directive for the European Commission: by adding a little dot of ink of mixed competence, they can – and routinely do – make any negotiation directive for a preferential trade agreement subject to necessary national parliamentary ratification, as they therefore of course did in the case of CETA (Conconi, Herghelegiu and Puccio 2021; Van der Loo and Wessel 2017). As EU member state governments have thus always made sure they can ultimately veto any EU trade agreement, we have to look for variation in institutional capacity at the national and regional level to find out whether and what might have changed there in recent decades.

Federal states have indeed increasingly adopted constitutional reforms that grant subnational entities the right to become active in international relations. Many sub-state entities have become formal or informal principals of foreign policy, which has resulted in various degrees to which they can exert control over EU external trade policy outcomes (Kersschot et al. 2020; Tatham 2018).

Firstly, sub-state actors can perform the role of a 'transceiver' of information from policymakers without a formal framework for involvement, as is the case for Scotland (Kersschot et al. 2020). Regions then take on the role of lobbyists (Tatham 2018). Secondly, a region can be a formal influencer (Tatham 2018). A region then is one of a collective group of principals in shared rule, as in the case of the German or Austrian Länder (Kersschot et al. 2020; Broschek and Goff 2020). Thirdly, regions can perform the role of principal with full

formal competencies, where each region essentially enjoys self-rule, as is the case for the Belgian regions (Keresschot et al. 2020; Broschek and Goff 2020). Each of these regions is one of multiple principals, each is effectively a veto player in EU external trade negotiations (Tatham 2018). The three types thus represent the domestic variation there can be in degree of regional institutional capacity to become international players.

The potential of subnational entities to become active is thus limited to issues that combine international policy and domestic competence. Examples are manifold, both with respect to bilateral and multilateral settings and range from culture and science over health and labor to climate and trade. In all these areas, subnational entities are often endowed with (sometimes exclusive) competences that are subject to international agreements and regulations.

The combination of an enabling institutional and policy context can trigger subnational entities to participate in international relations. However, whether they will do so in practice depends on a set of additional conditions. This is why the Belgian negotiation and approval process of CETA is of particular relevance. The Belgian constitution has endowed the regional entities with very substantive, exclusive competences, including in the policy field of international trade. Constitutional provisions have additionally granted the regional level with the right to conduct foreign policies in the domains they govern domestically, which makes Belgian regions principals as opposed to mere transceivers or lobbyists. On top of that, these broad regional competencies overlap to a great extent with the far-reaching EU competences in the field of international trade regulation, and are thus somewhat at loggerheads with the fact that the EU normally only deals directly with its constituent member states and not with subnational entities.

How, then, can we explain the temporary veto of CETA by Wallonia? Our variable oriented analysis of the Belgian case focuses on a set of factors for which Wallonia and Flanders differ (or not differ). Looking at the covariation between these variables and the outcome variable (temporary veto) allows us to make causal inferences regarding the effect of these variables on the outcome (Blatter and Blume 2008). The focus on how two regions (Flanders and Wallonia) within one state (Belgium) acted in one instance (CETA) makes our effort a within case analysis. It allows to keep a set of factors constant (regional institutional capacity, type of trade agreement) and examine the effect of the variation in another set of theoretically motivated factors (societal mobilization, party politics) on the outcome (support for or opposition against CETA). Our contribution is structured as follows. We first specify our explanatory model, elaborating on the model developed by Broschek and Goff (2020). In the next section, we trace the historical origins of the creation of Belgian regions' veto power over EU external trade policy. In the analytical part we offer an explanation for why the French-speaking part of Belgium mobilized against CETA and Flanders did not, despite having equal institutional opportunities to do so, while institutional opposition ended as soon as the Walloon government majority was aligned with the composition of government at the federal level. In conclusion, we discuss the implications of this episode for EU external trade policies and Belgian federalism.

## 2. Conditions for regional mobilization

The Treaty of Lisbon sets the general institutional context within which European institutions and member states act in trade policy. While the centralization of trade competences at the EU level of course dates back to the very beginning of the European Communities, the Treaty of Lisbon upgraded the role of the EP by granting it more information rights, co-decision and ratification powers (Roederer-Rynning and Kallestrup 2017). At first sight, this would seem to have happened at the expense of the member states. At the same time, however, the Treaty kept providing member states' national executives and parliaments – and depending on the constitutional provisions also regional executives and parliaments – with opportunities to wield power in EU external trade policies. The changes brought by the Treaty of Lisbon thus largely codified already existing political practice (Gstöhl and De Bièvre 2017). Indeed, all major external trade agreements of the European Coal and Steel Community (ECSC) since 1951, the European Economic Community (EEC) since 1958, the European Communities (EC) since 1967 and the European Union since 1993, have always been concluded by all governments of all member states as well as formally ratified by all member state parliaments, whether national or, when required, regional. This holds for the conclusion of all multilateral agreements negotiated by the European Commission in the framework of the GATT, for all the EC/EU bilateral preferential trade agreements and for all the so-called association agreements, which contain political cooperation commitments next to trade liberalization commitments and can only be approved under strict and explicit unanimity among all member states.

This observation puts the actual use by regional entities of institutional opportunities created by the Lisbon Treaty – and allegedly unavailable in the past – into perspective.<sup>i</sup> Rather, the incentives for their use have to be sought at the domestic level and more in particular in the

increased institutional capacity of some regions within EU member states, and in the resulting increased assertiveness of these regional actors within EU external policy making. This assertiveness also rests upon region-specific political preferences regarding policy content that may or may not be in line with the content of EU external trade policy, and upon the broader political environment. We thus outline and elaborate on the following conditions to explain variation in sub-national mobilization in EU trade politics, hereby building upon earlier work by Broschek and Goff (2020): (1) societal mobilization, i.e. the scope and content of EU trade agreements (policy dimension) and the extent to which preferential trade agreements touch upon the different kinds of interests of subnational entities (interest dimension), (2) regional institutional capacity, i.e. the capacity of regions to act (institutional dimension) and (3) party political competition across multiple levels of government (politics dimension).

#### (1) Societal mobilization

With regard to policy, the more agreements are negotiated, the more opportunities regions have to get involved. More importantly, since over two decades now, trade agreements are about liberalization of goods and services as well as behind-the-border regulatory measures in adjacent policy fields such as sustainability, health, intellectual property and privacy, labor standards and human rights, many of which overlap with competences of subnational entities. Subsequent European Treaty reforms have caught up with this expansion in content and scope of trade policy, yet always with some delay. Each Treaty reform has indeed incrementally codified the expansion of the trade agenda by extending the EC's and the EU's exclusive competence in trade-related matters. Moreover, the Court of Justice of the European Union (CJEU) has consistently interpreted the consecutive Treaty revisions very generously, according to its doctrine of implied powers, meaning that wherever the EU had acquired



internal competences, it also by implication holds the powers to negotiate about these internationally (Gstöhl and De Bièvre 2017). Yet, as soon as some member states insist on including one item of mixed competence in the negotiation directives for DG Trade, member state national and regional parliamentary veto power kicks in.<sup>ii</sup>

While policy content is thus certainly a necessary condition for regional mobilization, it is not enough. Subnational governments may also have economic incentives as they seek to defend domestic producers against foreign competitors (e.g., farmers or the steel industry) or – on the contrary – want to support exporting domestic producers to explore new markets (e.g., pharmaceutical exporters or firms providing harbor dredging services). This in turn can create *de facto* coalitions between import-competing sectors and those actors contesting regulatory provisions in the agreement on the one hand, and export-oriented sectors and supporters of such regulatory provisions on the other. Overall, the domestic distribution of economic societal interests is likely to be in line with the overall trade-dependency of a region. Some regions generate a larger share of their GDP, value-added and tax revenue through trading activities and exports (like Flanders or Baden-Württemberg), while others are more dependent on domestic consumption and/or state transfers (like Wallonia or Extremadura). This in turn is likely to be reflected in trade policy preferences voiced by political actors within party-political constellations in their regional and national parliaments and governments, and within the Council of Ministers and the European Parliament.

Also, non-economic, broader societal interests can be triggered by the expanding scope of trade agreements. NGOs with a focus on themes such as health, environmental protection and climate, human rights and development can have strong opinions on the effects of

regulatory parts of trade agreements, and make their inclusion conditional on approving of trade liberalization. Such concerns of NGOs may find friends and foes in the social and economic concerns of employers' and employees' organizations.

## (2) Regional institutional capacity

Even when the content of preferential trade agreements touches upon one or several types of regional interests, mobilization and certainly successful mobilization, can only take shape when regional entities have the institutional capacity to take part in trade policy. This is not an element that regional executives and their parliaments can dispose of at will but depends structurally on their constitutional constraints and opportunities. Broschek and Goff (2020) highlight that such institutional arrangements affect the degree of informality with which regions can mobilize. Systems with shared rule are characterized by more formal intergovernmental relations, limiting opportunities for mobilization at the international level. By contrast, federal systems dominated by veto players and self-rule display rather low institutionalization of intergovernmental relations and have more opportunities to mobilize on their own. Broschek and Goff also distinguish between senate and council type second chambers, whereby regional interests are indirectly represented at the federal level in the senate type and directly (by subnational executives) in the council type. More direct representation gives more opportunities to represent regional interests in federal policymaking and thus provides less incentives to mobilize unilaterally. In short, depending on the encompassing constitutional set-up, regions will be more or less inclined to become active international players.

## (3) Party political competition across multiple levels of government

Broschek et al. (2020) point out that institutional capacity and institutional self-interest are not enough to explain national and regional mobilization, but needs to be seen in interaction with policy preferences and party politics (e.g., in the case of Austria) and with political parties in opposition to the federal government using the second chamber to undermine federal policies, especially when a bill is polarized (e.g., in the case of Germany). The mobilization of societal groups against or in favor of preferential trade agreements may spill over to like-minded political parties triggering the regional government that these parties are part of to become active in trade politics. Regional governments dominated by liberal parties can be expected to be more favorable toward opening markets than governments led by social democrats, while green parties will want to make liberalization bindingly conditional on environmental protection. Policy preferences together with institutional capacity thus constitute the opportunity structure for party-political actors in government to decide to mobilize or not, especially when the party composition of the government at the regional level differs from that at the federal level. A regional government may thus mobilize in favor or against preferential trade agreements if the ruling majority at the national level differs from the ruling majority at the subnational level, offering a way to profile itself ideologically and act as opposition to the national government. This opportunity is all the more attractive if party-political competition is fierce at the subnational level (Bollen et al. 2020).

Sub-national entities are likely to become active when three elements of party politics are activated. First, a situation of incongruence of ruling, either horizontally between subnational executives or vertically between one or more subnational executives and the federal government, results in parties or party families finding themselves in government at one level and in opposition at another level. Especially parties in government at the regional level and in

opposition at the federal level may be tempted to exploit contentious issues, such as trade policies, mobilize their supporting parliamentary majority and profile themselves electorally. Secondly, mobilization of regional actors is more likely when external trade policy is just one of many contentious issues, making preferential trade agreements a case of indirect politicization. Political parties do not consider it to be the major point of contention but may use it as part of a much broader political fight between governmental levels. We thirdly expect mobilization to be more likely when the ideological position of a region is very clearly opposed to (some elements of) preferential trade agreements. The salience of trade politics then triggers a direct politicization by political parties. All three refinements are rooted in multilevel party politics (Detterbeck 2012). The more a country underwent constitutional reforms strengthening the position of sub-national entities, the more this new political opportunity structure opens the door to such regional actors seizing that window of opportunity to engage in a broader national political competition. A similar multilevel game can be found at a higher level, between national and European level actors. Mixed EU treaties create veto-players at the national level, i.e., member states who may have genuine trade related arguments but who primarily use such treaties as bargaining chips in other discussions that matter even more to them (see also Freudlsperger's (2018, 2020) comparison between the US, Canada and the EU).

We argue that this constellation of conditions resulted in one small regional entity ending up wielding enormous power over the outcome of PTA negotiations at the European supranational level. The Walloon veto even reinforced the EU in its external negotiations, providing an illustration of the paradox of weakness argument that in exceptional circumstances actors, who are theoretically weak as a result of power asymmetry, internal divisions or particular decision-making mechanisms, can nevertheless wield great power on the international level (Schelling 1960; Tatham 2008). The EU had large external bargaining power exactly because the

Commission negotiator had extremely little autonomy. As a result, Canada had but a choice between abandoning the deal or caving into the demands of Wallonia. Attaching great importance to enhanced market access to the lucrative large EU market and desiring regulatory cooperation with the EU, it agreed to changing the entire section on investment arbitration and an interpretative addendum to the treaty. This is very exceptional, and a clear effect of this paradox of external strength and internal weakness, as long as the other side (in casu Canada) wants a deal (De Bièvre 2018). Before substantiating our argument, we first turn to the intricacies of trade policies in the Belgian federation.

### 3. Belgian federalism and EU trade policies

Belgium has seen internal decentralization and increasing European integration proceed in parallel since the 1970s, resulting in a complex set of relations across multiple levels. Trade policy is a prime example of a policy domain affected by the parallel downward and upward institutional reforms (Beyers and Bursens 2006, 2013). Each reform has granted additional competences to the regions and communities. Several features of Belgian federalism are relevant for our argument here (for a full overview of Belgian federalism, see Deschouwer 2012). After the constitutional reform of 1993 had already given regions the right to represent themselves abroad and, more importantly, the right to sign international agreements within their fields of competence, the reform of 2001 granted the regions with full competence over export policy (Bollen et al. 2020, Pacquin 2010). The combination of both reforms entitled the Belgian regional entities to engage in external trade policies - for which they each established a set of administrations and agencies.

The regionalization of external trade powers, however, was in no way related to any intention of installing regional control over EU external trade policy. Instead, the reform was the result of particularistic arms production and export interests voiced in federal government by the Walloon socialist party in the 1990s in combination with Flemish regionalist party political demands for greater regional autonomy. Belgian state reforms are indeed to a very large extent shaped by party politics and much less by a logic of effective governance (Sinardet 2012).

Back in 1991, the Walloon socialist party triggered a government crisis by insisting that export licenses be granted for exports to the former republics of Yugoslavia to one of the world's leading shot and fire-arm producers, FN Herstal near Liège. Its federal minister Philippe Moureaux had detonated an 'institutional atomic bomb' by forcing the Dutch speaking ministers to unconstitutionally accept a new federal law that allowed arms export licenses for FN to be approved only by the French speaking members of the federal government. This amounted to the de facto regionalization of weapons export licensing and opened the way for arms exports to the former Yugoslav republics and Saudi-Arabia, for arms which later turned out to be ultimately destined for Hutu militia in Eastern Congo. Despite pacifist declaratory opposition by the Flemish socialist party in government, weapons export licensing had thus been effectively wrenched out of the hands of the federal Belgian government (Belgische Senaat 1997).

As a result, trade and export policy remained in a constitutional limbo until the 2001 state reform. During the preparation for that new round of federalization or regionalization of the

Belgian state, none of the federal government negotiating parties (liberal, social democrat and green parties on both the Flemish and Francophone side) actively advocated the regionalization of external trade. They were primarily interested in more financial means (the Francophones) and more fiscal autonomy (the Flemish). However, in order for the state reform to pass the high two third majority decision-threshold in the federal parliament, support was needed from the Flemish regionalist party (VU), who demanded the regionalization of a set of competences, among which the highly symbolical competence of external trade. The VU found an ally for this demand in the regionalist wing of the Walloon social-democratic party, who was keen to now formalize the de facto regionalization of external trade to guarantee export licenses for the economically important Walloon arms industry. As a result, the entire competence of external trade, including EU external trade policy, became part of the overall package deal of the 2001 state reform (Delwit and Hellings 2002; Alen 2002)

In short, the creation of veto powers for Belgian regions over EU trade policy had its origin in regional interests and preferences and fierce party-political dynamics, rather than in any consideration for effective policymaking. The Walloon regional veto over CETA is ironic in several ways. For one, the origin of the Flemish frustration with the Walloon refusal to support CETA lies in its own demand to have all trade policy regionalized in the past. On the other hand, the capacity of the Walloon government to veto a European trade agreement for so-called progressive reasons has its origin in the intransigence with which the Walloon PS had defended its arms producers. This very same Walloon government even 'nationalized' the FN Herstal, which has been 100% property of the Walloon region since 1997.

Having thus installed self-rule over a whole range of competencies, among which trade policy, negotiators had to simultaneously spell out how the views of three potential veto players, or principals, would be coordinated so as to enable a Belgian delegation to take a common position in the Council. Article 167 of the constitution provides that the federal level coordinates foreign policy. To this end, regions, communities and the federal level have installed an Inter-ministerial Committee on Foreign Policy (ICFP), chaired by the federal Foreign Affairs Ministry. Ultimately, the *Comité de Concertation / Overlegcomité*, composed of the prime ministers of all government levels, can be convened to reconcile divergent positions in foreign policy matters. In addition, the executives of the subnational entities and the federal level have concluded several Cooperation Agreements. The Agreement that regulates Belgium's participation in the Council of the EU stipulates that Belgium can be represented by a minister, a diplomatic representative or a civil servant of one of the regional authorities in the respective bodies of the Council, but also that whoever represents Belgium in the Council needs to defend a single Belgian position. The latter needs to be identical to the result of the elaborate internal coordination mechanisms. This *modus operandi* obviously restricts the direct articulation of individual regional interests within the Council meetings. While Belgian regions and communities became increasingly affected by EU trade agreements to the extent that these agreements now also cover services, direct investment, environmental protection, and other issues that reside under their domestic competence, they cannot directly represent their interests in the Council as it is the member state Belgium that takes part in Council deliberations to determine the negotiation mandate for the European Commission. To reconcile the Belgian constitutional rights of the subnational entities with the requirements of the EU treaty, Belgium has set up procedures to ensure



coordination of the Belgian position in EU trade policy during the negotiation phase, and to organize the approval by all competent levels in the ratification phase.

The mechanism to determine the Belgian position at the EU level in the negotiation phase is characterized by intricate coordination mechanisms among all involved governmental levels. The decentralization of trade competences to subnational entities within Belgium has thus, again somewhat ironically, resulted in an increased cooperation among the regional and federal government levels (Beyers and Bursens 2006, 2013). The latter, while hardly left with any trade competences, remains responsible to coordinate the Belgian position, which is quite a challenge as the non-hierarchical nature of Belgian federalism grants every competent government level a veto in this coordination endeavor. Hence, while the direct road to formal individual participation at the EU level is blocked by the EU, the regions have ample opportunity to voice their opinion and defend their interests during the intra-Belgian EU policy coordination. One could even state that Belgian and European context and the pressure to actively engage in EU policymaking has made the exit option for regions less attractive. It is more rewarding to play along (voice) than to run away (exit) from the domestic game. Engaging in individual but less effective direct contacts with EU institutions is no priority for Belgian regions. Regions from other member states envy this privileged position as principals and somewhat reluctantly turn to second-best lobby-type strategies to defend their interests at the EU level (Kersschot et al. 2020).

Using this voice is primarily reserved for the executive actors of each government level. Belgian federalism is profoundly dominated by executives, and even more so by the political parties that make up the executives, in a political system aptly characterized as a partitocracy

(Deschouwer 2012). Yet, while determining the common Belgian position is indeed formally a matter of executives, this should not prevent parliaments from at least scrutinizing their respective executives' negotiation positions (Bursens and Deforche 2008, Meier and Bursens 2021). In contrast to executives, however, legislatures don't exploit the opportunities to voice their opinions. Parliamentary scrutiny of EU policies in Belgium is consistently ranked among the weakest in Europe (Hefftlar et al. 2015). This is also the case in the area of trade, at least until TTIP and later CETA appeared on the agenda in 2015-2016 (Bollen et al. 2020).

In contrast to the stage of formulating the Belgian position, parliaments play a crucial role during the ratification stage of EU trade agreements. The non-hierarchical nature of Belgian federalism requires that international treaties (and therefore also EU external treaties such as PTAs) must be ratified by all the government levels that hold competences affected by those treaties. The member state Belgium cannot notify the Belgian ratification of such treaties unless and until all competent levels have done so. As ratification is a prerogative of legislatures, this means that all regional parliaments must approve such treaties. This requirement provides regional governmental and party-political groups in regional parliaments the instrument of exit at the ratification stage. In the remainder of the paper, we show that this option was activated by the dominant party in the Walloon regional executive during the ratification of CETA.

#### 4. The Walloon regional executive mobilization against CETA

In seeking to explain the Walloon mobilization against the EU-Canada trade agreement CETA we keep our focus squarely on the behavior of the Walloon region, but constantly compare the constellation of conditions for mobilization in Flanders so as to maximize causal inference. We show that a combination of opposition to curtailment of regulatory autonomy, a low trade dependence, the institutional availability of the veto option, and the fierce party-political competition engendering government-opposition dynamics only together could constitute the necessary conditions leading to the surprising *éclat* of Wallonia's temporary blockage of the CETA agreement. Indeed, its behavior very much resembled the resistance of that one Gaulish village led by Asterix against an overwhelming majority of EU member states and their parliaments, and a majority in the European Parliament, all declaring their intent to ratify the agreement.

#### (1) Societal mobilization

With respect to the policy content of CETA, it is well documented elsewhere that NGOs were voicing fears of regulatory downgrading and/or regulatory chill and were mounting a vigorous campaign against private investment arbitration rights – albeit it with great variation in intensity across EU member states (De Bièvre and Poletti 2016; De Ville and Siles-Brügge 2016; Young 2017). The amount and intensity of contestation and NGO mobilization in the Walloon region, however, was not higher than in Germany and Austria, where it was particularly outspoken (Bauer 2016; Gheyle 2020; Siles-Brügge 2017: 471). Civil society mobilization thus does not suffice to explain the outcome with party politics, ministerial ideology and business interests also entering the fray (Bollen 2018: 345), cautioning us to attribute too much agency to NGO activism to explain the Walloon executive threat of veto.

Yet, the CETA negotiations did enjoy far lower levels of support from business actors in relatively low-trade dependent Wallonia compared to support in highly trade dependent Flanders or other production and trading hubs in the EU.<sup>iii</sup> Administering a region dominated by export-oriented industries and trading activities, the Flemish government was keen on voicing its strong overall support to the negotiations, while also providing more detailed endorsement for market-opening in particular sectors, like for its dredging industry. In Wallonia by contrast, import-competing sectors, such as agriculture, caught the ear of the regional government from the onset of the negotiations, forming a *de facto* coalition with those opposing regulatory aspects of the draft agreement, especially the inclusion of investor-state arbitration into the PTA. These voices tallied with the more generic anti-TTIP and Stop CETA campaigns ran by NGOs in some other EU member states, especially Austria and Germany (Magnetite 2017; Bauer 2016). Yet, Walloon opposition, just like NGO mobilization against CETA and TTIP (the envisaged bilateral trade agreement between the EU and the USA), did not extend to all other ongoing bilateral trade agreement negotiations. Although it has been argued that opposition against the EU-US negotiations on TTIP ‘spilled over’ into the opposition to CETA (Gheyle and De Ville 2019), the Walloon government played no role whatsoever in stopping the TTIP negotiations. The mere presence of diverging socio-economic incentives to rather support or oppose a particular trade agreement initiative thus clearly does not suffice to explain mobilization, politicization or contestation (De Bièvre et al. 2020; De Bièvre and Poletti 2020).

## (2) Institutional capacity

As we have explained above, Flanders and Wallonia have the same institutional capacity. Constitutionally, the Belgian regions are governed by self-rule, accompanied by relatively

formal intergovernmental coordination at the federal level. However, since there is no hierarchy of norms, i.e. federal laws do not trump regional decrees, the federal level cannot act as final arbiter in case of conflict, which in turn maintains the possibility of a regional veto. And since the second federal chamber in Belgium (*Sénat/Senaat*) is not of the council type (where the Flemish and Walloon executives would be represented) and also since it has virtually no powers anymore, regional executives hold unequivocal veto power as direct principals and are able to block the European Commission negotiation agent at the supranational level. This leaves open the possibility that one region can avail itself of a veto and no agreement is reached.

However one qualifies the constitutional distribution of competences over trade policy in the Belgian federation, it de facto turns out to be a matter of shared competence, whereby the federal level is unable to decide alone and is limited to representing what the regions tell it or allow it to do (Kersschot, et al. 2020). Such systems are usually characterized by quite formalized intergovernmental coordination. And, indeed, in all other instances of bilateral trade agreement negotiations conducted by the EU, coordination allowed the Belgian federal government level to monitor and formally support the negotiation process and the ratification of these agreements. However, when push comes to shove, the option of going it alone is available and can be used by one single region – provided other conditions create a favorable opportunity structure to do so. The somewhat surprising combination of on the one hand constitutionally granted self-rule, with a relatively elaborate system of intergovernmental coordination between governments levels, and the near absence of any senate-like regional representation thus provides any Belgian region with the most far-reaching institutional

capacity to monitor, threaten and even block supranational EU policy making in its external trade policy.

Yet again, however qualified, the capacity to act is equal for each and every Belgian region. In and of itself, institutional capacity clearly does not suffice for Wallonia and Flanders to actively make use of it. To understand why only Wallonia mobilized, we turn to party politics, a variable that often shows high explanatory power in Belgian politics (De Winter and Van Wynsberghe 2015).

### (3) Party political competition across multiple levels of government

Given its extremely high institutional capacity, its only lukewarm support for the overall EU-Canada negotiation package and its straight-out rejection of the investment chapter, and especially that the Walloon Socialist Party was not part of the federal government at the time, a golden window of opportunity opened up for the Walloon region to actively mobilize and oppose CETA at the federal and thus also European level. Early on during the negotiation process, regional minister-president Paul Magnette had already warned Commissioner Cecilia Malmström that he might avail of his veto against the inclusion of investment arbitration (in whatever form) in the agreement (Magnette 2017). At the time of the negotiations, the PS was in opposition to a federal government, headed by Charles Michel and composed of the francophone liberal party MR as well as the Flemish liberals (OpenVLD), the Flemish Christian-Democrats (CD&V) and the Flemish regionalists (N-VA). At the Walloon regional level however, the PS headed the government, narrowly relying on a majority of socialists and Christian-Democrats in the Walloon legislature, facing the opposition of the green party Ecolo, but especially the extreme left party PTB, which was picking up support from socialist trade

unions dissatisfied with the PS establishment. The moment was thus propitious to try and drum up its parliamentary support and go for an all-out attack on the federal liberal government who wanted to keep the CETA negotiations on track.

At the European level, few took the threat seriously. According to the European Treaty, the start of the negotiations had not required national parliamentary assent, and hence had not involved regional Belgian assent either, as the endorsement by the federal government within the Council of Ministers had sufficed to start the negotiations. Moreover, few believed the Walloon government could and would use its constitutional powers to the maximum and dare to endanger an entire deal all on its own and at the very final ratification stage. Yet, the Magnette government did follow through and halted the entire EU decision process for an entire week in 2016, extracting a joint interpretative statement, and a guarantee that the CJEU would have to rule on the conformity of the investment chapter with the Treaty (Van der Loo 2016).

By contrast, party political government and opposition dynamics militated in the opposite direction in the Flemish regional executive. Its regional parliamentary majority overlapped with that at the federal level. As a result, they actively voiced support for all EU trade agreement negotiations conducted by the European Commission and wanted the federal government to support CETA – which it could not because of the Walloon region's constitutional veto right and its government's recalcitrance.

In the end, this configuration of conditions and the tenacity and daringness with which Paul Magnette seized the moment, resulted in a surprisingly strong influence in external

negotiations. As an entirely minoritarian and small political and economic entity, the Walloon executive and parliament managed to wield disproportionate power over the outcome. With relatively few offensive, export-oriented constituencies to defend, a set of import-competing sectors to satisfy, the Walloon executive, disposed of the institutional capacity to veto, could domestically afford voicing opposition and annoy its liberal electoral competitors at the federal level. Economically stronger Flanders thus turned out to be impotent in the face of an opposition that it could not neutralize institutionally.

The Walloon government's opposition to Belgium's signature achieved two elements. It was able to amend the Joint Interpretative Instrument, stressing member states' ability to govern public policies as they see fit and specifying the role of the Investment Court System (ICS). Furthermore, it succeeded to add a statement referring to the intra-Belgian agreement, safeguarding the veto-right of regional parliaments over the final ratification of CETA and announcing to question the CJEU on the compatibility of the ICS with EU law (Van der Loo 2016). The Walloon government heralded all this as a major victory. It must be said, though, that many of the clarifications had already been included in the Joint Interpretative Instrument before the Walloon CETA *saga*. In addition, in 2019 the CJEU ruled the ICS to be in conformity with the EU Treaty, depriving the Walloon government of its most important argument against the Treaty<sup>1</sup>. That leaves the safeguarding of the veto-power to finally ratify CETA, which is enshrined in the Belgian Constitution anyway.

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<sup>1</sup> [http://arbitrationblog.kluwerarbitration.com/2019/04/30/opinion-117-the-cjeu-confirms-that-cetas-investment-court-system-is-compatible-with-eu-law/?doing\\_wp\\_cron=1595331183.9950110912322998046875](http://arbitrationblog.kluwerarbitration.com/2019/04/30/opinion-117-the-cjeu-confirms-that-cetas-investment-court-system-is-compatible-with-eu-law/?doing_wp_cron=1595331183.9950110912322998046875)



Meanwhile, the political heat produced by the Walloon CETA episode has subsided – in light of our argument, not surprisingly so. On 19 June 2017, the Magette regional government fell when the Christian-Democratic coalition partner CdH withdrew its support in reaction to a series of corruption cases involving the PS. The CdH formed an alternative governmental coalition with the MR, bringing the composition of the regional Walloon government more in line with the composition of the federal government. After the May 2019 regional election, the PS regained control of the Walloon government, but has since not mobilized against the final ratification of CETA. It may still happen as the Walloon parliament (and therefore Belgium as a whole) has not yet ratified CETA. However the new federal government that took office in October 2020 has tied Flemish pro-CETA parties to the reluctant PS, making it unlikely that the PS will play hardball regarding the ratification of CETA.

## 5. Conclusion

CETA regulates – among other - issues that belong to the competences of Belgian subnational authorities who dispose of constitutionally endowed powers that enable them to weigh into the Belgian approach regarding the negotiation and ratification of mixed EU trade agreements. While policy content and institutional capacity are considered to be necessary conditions for regional mobilization, they are also insufficient to explain why Flanders and Wallonia reacted in such opposite ways. To explain the latter, we pointed to a combination of diverging economic interests and – above all – the effects of distinctive Belgian multilevel party politics. These two sufficient conditions triggered the mobilization against CETA by the Walloon executive, at the time dominated by social-democrats who were involved in a fierce

opposition to the center-right Flemish and federal governments and needed to stop bleeding votes to the extreme left. The current presence of the PS in both the regional and the federal government has closed the window of opportunity because the incentive of party-political competition is no longer fulfilled, making ratification by the Belgian federal government possible and likely. By showing the presence and absence of covariation of conditions with the outcome, and by comparing the variation of these conditions between two subnational entities in a within case analysis, our contribution identified the causal effect of economic interests and, above all, party politics on the temporary blockage of CETA by the Walloon region. By having done so, we have paved the way to test the explanatory power of both factors in other instances of federal member states with regions that have the institutional capacity to shape external EU trade policies. More in particular future research may look into the extent that also regions that cannot act as principles but still have substantial leverage can effectively mobilize against EU trade agreements (Blatter and Blume 2008).

The strategy of the Walloon government had two major effects. Regarding CETA, it resulted in clarifications strengthening the already more widely accepted concerns over some elements in the EU-Canada Treaty. While the main argument (the incompatibility of the ICS with EU law) was discarded by the CJEU, the whole episode left the EU with some homework regarding CETA as well as future PTAs. As final ratification is still pending in 2021 the EU will have to make sure that the provisional application of CETA and the further elaboration of the ICS will take Walloon concerns to heart. Pro-trade actors, including the European Commission, many member states, and the INTA committee in the European Parliament are keen to prevent that future trade agreements will suffer a similar treatment (Gehring 2018). They have reacted by splitting up trade and investment agreements into one agreement falling under

exclusive EU competence, and a second agreement falling under mixed competence. In case of not splitting up agreements, it may put pressure on the member state representatives (including their regions) to not engage in strategically overloading the Commission mandate by obliging it to also negotiate on matters of mixed competence. However, having national competences part of the negotiations does not necessarily have to endanger the EU's negotiation position. The threat of a national (or regional) veto may activate the paradox of external strength resulting from internal weakness, as intra-state level ratifying actors can choose to seize the moment. On the other hand, as this argument only works as long as the other side of the negotiating table wants a trade deal, it is not universally applicable.

Regarding the federal state of Belgium, the CETA episode raises the question whether and how regions can be involved at the negotiation stage. Granting regions more voice in the development of Belgium's negotiation mandate may prevent them from triggering the exit option during the ratification stage. Freudlsperger (2018 and 2020) shows that early involvement and participation of stakeholders not only reduces resentment, it also builds support for more far reaching concessions, as fears about regulatory downgrading are more easily debunked as quite unfounded, the more the stakeholders are involved in developing them alongside the negotiators. On the other hand, such early involvement may slow down or even prevent the elaboration of a mandate as similar (party) political strategies are very likely to occur when different parties dominate governments at different levels. In addition, as the conclusion of trade agreements takes several years, parliamentary majorities may also change between the two stages. Overall, changes in political practices are no guarantee of smooth policymaking against the background of a constitution that grants regions with exclusive competences, the right for regions to conduct their own foreign policy and the

absence of regional involvement in federal policymaking, on top of two party systems within one state, dominated by parties that hold opposite positions regarding EU trade policies.

## References

Alen, A. (2002). *Algemene beschouwingen bij de vijfde staatshervorming van 2001*. Brugge: Die Keure.

Bauer, M. (2016). "Manufacturing Discontent: The Rise to Power of Anti-TTIP Groups." *ECIPE Occasional Papers* 2016(02): 1-147.

Belgische Senaat (1997). *Handelingen van de openbare commissievergaderingen*, Commissie voor de buitenlandse aangelegenheden, Vergadering van woensdag 29 januari 1997.

Beyers, J., & Bursens, P. (2006). The European rescue of the federal state: How Europeanisation shapes the Belgian state. *West European Politics* 29(5): 1057-1078.

Beyers, J., & Bursens, P. (2013). How Europe shapes the nature of the Belgian federation: Differentiated EU impact triggers both co-operation and decentralization. *Regional & Federal Studies* 23(3): 271-291.

Blatter, J., & Blume, T. (2008). In search of co-variance, causal mechanisms or congruence? Towards a plural understanding of case studies. *Swiss Political Science Review*, 14(2), 315-356.

Bollen, Y. (2018). *The Domestic Politics of EU Trade Policy. The Political-Economy of CETA and Anti-Dumping in Belgium and the Netherlands*, PhD Dissertation. Gent, Universiteit Gent.

Bollen, Y, De Ville, F and N. Gheyle. (2020). 'From Nada to Namur. Sub-Federal Parliament's Involvement in European Union Trade Politics, and the Case of Belgium', in Broschek, J. and P. Goff (Eds.). *The Multilevel Politics of Trade*. Toronto, University of Toronto Press: 256-280.

Broschek, J., Bussjäger, P. and C. Schramek. (2020). 'Parallel Pathways? The Emergence of Multilevel Pathways in Austria and Germany' in Broschek, J. and P. Goff. (Eds.). *The Multilevel Politics of Trade*. Toronto, University of Toronto Press: 208-233.

Broschek, J. and P. Goff. (Eds.). (2020). *The Multilevel Politics of Trade*. University of Toronto Press.

Bursens, P., and J. Deforche, J. (2008). Europeanization of subnational polities: the impact of domestic factors on regional adaptation to European integration. *Regional & Federal Studies* 18(1), 1-18.

Conconi, P., C. Herghelegiu and L. Puccio (2021). EU Trade Agreements: To Mix or Not to Mix, That Is the Question. *Journal of World Trade* 55(2), 231-260.

De Bièvre, D. (2018). "The Paradox of Weakness in European Trade Policy: Contestation and Resilience in CETA and TTIP Negotiations." *The International Spectator* 53(3): 70-85.

De Bièvre, D. and A. Poletti (2016). "Why the Transatlantic Trade and Investment Partnership is not (so) new, and why it is also not (so) bad." *Journal of European Public Policy* 24(10): 1506-1521.

De Bièvre, D. and A. Poletti (2020). "Towards Explaining Varying Degrees of Politicization of EU Trade Agreement Negotiations." *Politics and Governance* 8(1): 243–253.

De Bièvre, D., P. Garcia-Duran, L. J. Eliasson and O. Costa (2020). "Editorial: Politicization of EU Trade Policy Across Time and Space." *Politics and Governance* 8(1): 239–242.

Delwit, P., and B. Hellings. (2002). La nouvelle réforme de l'État: processus, contenu, méthode. *Administration publique mensuel-Institut belge des sciences administratives*, 2, 99-106.

Deschouwer, K. (2012). *The politics of Belgium*. Basingstoke: Palgrave Macmillan.

Detterbeck, K (2012) *Multilevel Party Politics in Western Europe*. New York: Palgrave.

De Ville, F. and G. Siles-Brügge (2016). Why TTIP is a game-changer and its critics have a point. *Journal of European Public Policy* 24(10): 1491-1505.

De Winter, L. and C. Van Wylsberghe (2015). Kingdom of Belgium: Partitocracy, Corporatist Society, and Dissociative Federalism, in Rensch, W. and K. Detterbeck, (Eds.) *Dialogues on Political Parties and Civil Society in Federal Countries*, Oxford: Oxford University Press: 40-69.

Freudlsperger, C. (2018). "More voice, less exit: sub-federal resistance to international procurement liberalization in the European Union, the United States and Canada." *Journal of European Public Policy* 25(11): 1686-1705.

Freudlsperger, C. (2020). *Trade Policy in Multilevel Government Organizing Openness*. Oxford, Oxford University Press.

Gehring, M. (2018). Subnational Participation in International Trade Law: Options for the European Union, *CIGI papers* 167.

Gheyle, N. (2020). Huddle Up! Exploring Domestic Coalition Formation Dynamics in the Differentiated Politicization of TTIP, *Politics and Governance* 8(1): 301–311.

Gheyle, N. and F. De Ville (2019). 'Outside Lobbying and the Politicization of the Transatlantic Trade and Investment Partnership'. In: D. Dialer and M. Richter, *Lobbying in the European Union. Strategies, Dynamics and Trends*, Springer International Publishing.

Gstöhl, S., and D. De Bièvre, D. (2017). *The trade policy of the European Union*. Macmillan International Higher Education.

Heffttler, C. Neuhold, O. Rozenberg, and J. Smith (Eds.). (2015). *The Palgrave handbook of national parliaments and the European Union*. Basingstoke: Palgrave Macmillan.

Kersschot, M., B. Kerremans and D. De Bièvre (2020). "Principals and transceivers: regional authorities in EU trade negotiations." *Political Research Exchange* 2(1): 1-20.

Magnette, P. (2017). CETA: *Quand l'Europe déraile*, Luc Pire.

Meier P. and P. Bursens (2021). Belgium. The Democratic State of the Federation in Benz, A. and J. Sonnicksen (Eds.) *Federalism and Democracy*, Toronto: University of Toronto Press, 180-196.

Meunier, S., and C. Roederer-Rynning (2020). Missing in action? France and the politicization of trade and investment agreements. *Politics and Governance* 8(1) : 312-324.

Paquin, S. (2010). Federalism and compliance with international agreements: Belgium and Canada compared. *The Hague Journal of Diplomacy*, 5(1-2) : 173-197.

Roederer-Rynning, C. and M. Kallestrup (2017). National parliaments and the new contentiousness of trade. *Journal of European Integration* 39(7): 811-825.

Schelling, T. 1960. *The Strategy of Conflict*. Cambridge, MA: Harvard University Press.



Sinardet, D. (2012). Federal reform and party politics. The case of the fifth Belgian state reform. In Benz, A., and F. Knüpling (Eds.). *Changing Federal Constitutions: Lessons from International Comparison*, 135-60. Verlag Barbara Budrich.

Tatham, M. (2008). Going Solo: Direct Regional Representation in the European Union. *Regional & Federal Studies* 18(5): 493-515.

Tatham, M. (2018). The Rise of Regional Influence in the EU – From Soft Policy Lobbying to Hard Vetoing. *JCMS: Journal of Common Market Studies* 56(3): 672-686.

Van der Loo, G. (2016) CETA's signature: 38 statements, a joint interpretative instrument and an uncertain future." *CEPS Commentary*, Brussels, Centre for European Policy Studies.

Van der Loo, G. and M. Hahn (2020). EU Trade and Investment Policy since the Treaty of Lisbon. Achievements and future priorities. *CEPS Research Report* RR2020-04. Brussels, Centre for European Policy Studies.

Van der Loo, G. and R. A. Wessel (2017), The non-ratification of mixed agreements: Legal consequences and solutions. *Common Market Law Review* 54(3): 735-770.

Young, A. R. (2017). *The New Politics of Trade. Lessons from TTIP*. New York, Agenda Publishing, Columbia University Press.

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<sup>i</sup> Only very recently have member states allowed the EU to conclude a preferential trade agreement with a third country under exclusive competences, not requiring national parliamentary approval. The investment chapters of the EU-Singapore agreement in 2018 and the EU-Vietnam agreement in 2019, which are subject to mandatory national parliamentary ratification, were ‘split of’ and are awaiting arduous ratification procedures (Van der Loo and Hahn 2020, p.11).

<sup>ii</sup> Member states may even do this purposely on beforehand so as to secure their veto rights in the ratification stage (Meunier and Roederer-Rynning 2020)

<sup>iii</sup> Almost 75% of Belgian export to Canada originates from Flanders  
(<https://www.flandersinvestmentandtrade.com/export/landen/canada/cijfers>)