Czech-Mate: How a “Conflation Trap” Nearly Nullified the Canada-EU Free Trade Agreement

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In October 2009, Canada and the European Commission opened negotiations on a free trade agreement, now known as the Comprehensive Economic and Trade Agreement (CETA). That same year, Canada reinstated a requirement for citizens of the Czech Republic to possess a temporary resident visa (TRV) upon entry into Canada. These two ostensibly isolated events converged and, in creating a triangulation of interests and preferences, allowed the Czech Republic to credibly commit to utilizing veto options to impede the ratification of the CETA. In seeking to explain this series of events, this article posits that Canada engaged in a “conflation trap”, whereby the supranational and unitary European Commission was mistaken as the necessary and sufficient organ for the ratification of the CETA, with member states’ approval serving a secondary role. The institutional architecture of the EU does not support this caricature, as the events of the Canada-Czech Republic visa dispute demonstrate.

Keywords: European Union, Czech Republic, Comprehensive Economic and Trade Agreement (CETA), visa dispute, supranationalism, intergovernmentalism

Introduction

In October 2009, Canada and the European Union (EU) opened negotiations on a free trade agreement that has since become known as the Comprehensive Economic and Trade Agreement (CETA). Such an agreement would, according to proponents, provide enhanced economic growth opportunities for Canada and the 28 member states of the EU, while contributing to the broader international narrative of reduced barriers to interstate trade. At the time of writing, Canada and the European Commission have reached an agreement, in principle, that would allow the CETA to proceed through the ratification process in the necessary European Union institutions—namely, the Council of Ministers and the European Parliament (“Council” and “EP” hereafter, respectively). The relative expedience of this agreement should not be mistaken, however, as a testament to the preferential alignment of all involved parties to conclude the agreement. Instead, the negotiation process for the CETA has demonstrated the Canadian government’s shortfall in awareness of the decision-making architecture of the European Union, which compromised the ability of the CETA to advance through to the ratification process.

This article focuses on the visa dispute between Canada and the Czech Republic as symbolic of this unpreparedness of the Canadian government in negotiating with the European Union. In focusing on this case study, this article posits that Canada suffered from a “conflation trap”, whereby the multifarious preferences and agendas of actors converged on the CETA negotiations in an unforeseen way. Specifically, this article

proposes two fundamental institutional traits of the EU that Canada neglected in igniting the Czech visa dispute while simultaneously negotiating a free trade agreement with the European Union. First, Canada overestimated the unity of the European Union as an autonomous actor. Though negotiations for the CETA were conducted through the European Commission—arguably the most supranational and unitary institution of the EU institutions—the *de jure* ratification thereof necessarily requires the unanimous consent of each of the 28 member states. Consequently, Canada assumed it was negotiating within a one-level transaction (Canada-European Commission), when instead it was engaging in a two-level transaction between the EU and the 27 constituent member states (and, since the beginning of the negotiations, 28 constituent member states). The implication, then, is that Canada was confronting multiple priorities from multiple actors; though the European Commission was focused on the terms of the CETA, other actors were able to exploit the opportunity to rectify preexisting non-trade-related issues. This is exactly what the Czech Republic did—by recognizing an opportunity to rectify an unpopular visa arrangement, the Czech Republic government threatened to utilize veto capabilities to nullify the CETA at the ratification stage.

Second, Canada underestimated the power and influence of smaller member states in the EU. Independently, the member states of the European Union are markedly asymmetrical in their domestic and international resources and capabilities; the conventional formula is that the “Big Three” member states (France, Germany, and the United Kingdom) overshadow the international weight of the 25 other member states. Historically, certain smaller member states have been able to “punch above their weight”—namely, the Nordic member states (Laatikainen, 2003)—though such instances are unequivocally the exception to the rule. Exceptions notwithstanding, the power asymmetries that exist outside the Union are nullified within the Union in legislative areas subject to unanimity (of which the CETA is included). Accordingly, with each member state endowed with a single vote and a veto opportunity, size does not matter. This article will proceed first by outlining the impetus and lifecycle of the Canada-Czech visa dispute, starting by situating the Czech Republic in the EU, and will then position this dispute within the broader climate of relations between Canada and EU. With this empirical background, this article will proceed to defend the contention that Canada suffered a “conflation trap” of negotiation procedures with the European Union in two regards. First, Canada overestimated the solidity of the EU as a unitary actor. Second, by believing the EU to be a unitary actor, Canada underestimated the role and relative weight of smaller member states in concluding the trade agreement. Put simply, in negotiating with the most supranational organ of the EU, the import of member states was overlooked. Finally, this article will offer some conclusions.

Small State, Big Stakes

The Czech Republic formally acceded to member state status in the European Union in 2004. As part of the “big bang” enlargement that witnessed the accession of 10 new member states—mostly post-communist central and eastern European (CEE) states—the Czech Republic was part of the single-largest expansion of the EU since the first enlargement of Denmark, Ireland, and the United Kingdom in 1973. Though the scholastic community remains divided as to whether the “big bang” enlargement of 2004 and 2007 has transformed the Union relative to the number of new member states, there is agreement that the 2004/2007 enlargement has impacted the institutions of the EU to some extent (Wivel, 2010; Grøn & Wivel, 2011; Edwards, 2006; Björkdal, 2008; Baun & Marek, 2013).

The Czech Republic was one of the first post-communist CEE states to establish a relationship with the

EU. Beginning in 1990, the Czech Republic became a recipient state of the PHARE program, through which aid and assistance are provided to potential member states in their pre-candidature stage. Shortly thereafter, the Czech Republic, along with Poland and Hungary, independently negotiated an Association Agreement (also known as a “Europe Agreement”), further deepening the relationship between the EU and establishing the requisite relations for member state candidacy (O’Brennan, 2006). In the 1993 Copenhagen Summit, the European Council’s Presidency Conclusions made clear the next step for states bearing an Association Agreement: “The associated countries in central and eastern Europe that so desire shall become members of the European Union” (European Council, 1993). Following this announcement, the Czech Republic and other candidate states’ accession in the EU would be initiated, subject to the fulfillment of a robust assortment of conditions (today known as the “Copenhagen Criteria”) and the unanimous endorsement of the 15 incumbent member states. Unlike the presently disparate and differentiated negotiation pace between the EU and potential candidate states in the Western Balkans, for example, the notion of the 12 candidate states acceding as a “convoy” governed the enlargement timeline of the “big bang”—however, the “convoy” was ultimately sliced at the rear so as to reconcile the unresolved domestic issues in Romania and Bulgaria (Bechev & Noutcheva, 2008). With the Commission preparing a White Paper in 1995 to explicate the precise details of the conditions for the candidate states, and the subsequent approval of such conditions by the Council, the process toward EU membership of the Czech Republic was formalized through the Council’s Luxembourg Summit in 1997. Over the ensuing seven years, the Czech Republic and the “convoy” adapted to the necessary preconditions for accession, the most basic of which comprise the presence of a market-based economy, the existence of a democratic political system, and the ability of the candidate state to conform to and uphold the demands of membership. With the successful satiation of these conditions, the Czech Republic successfully acceded to the European Union on 1 May 2004 alongside Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

The Canada-Czech Visa Dispute

In July 2009, Canada reinstated a requirement for citizens of the Czech Republic to possess a temporary resident visa (TRV) upon entry into Canada. The timing of the visa reinstatement represented a reflex to the increased number of asylum seekers from the Czech Republic. In particular, Canada has witnessed an increased number of Romani (or “Roma”) asylum seekers who seek admission to Canada on the basis of discrimination experienced or anticipated in the Czech Republic. The treatment of Roma within their home states (mostly within CEE) is beyond the scope of this article, and the elusive documented veracity of contemporary allegations and substantiation of Roma discrimination is a debatable and sensitive subject (Pusca, 2012). The EU Commission, though, has undertaken the task of proposing a framework for acceptance of the Roma in Europe, arguing that the Roma “are very often the victims of racism, discrimination and social exclusion and live in deep poverty lacking access to healthcare and decent housing” (European Commission, 2012a). From the perspective of the EU Commission, then, the case for Roma asylum is compelling. For the Canadian government, however, the question of the sincerity and desperation of Roma immigrants from the Czech Republic was not, singularly, the impetus for re-imposing the visa restriction—it was the also volume of asylum seekers from the Czech Republic. In announcing the introduction of the TRV requirement, Canada’s Citizenship, Immigration and Multiculturalism Minister Jason Kenney stated “the visa process will allow us to assess who is coming to Canada as a legitimate visitor and who might be trying to use the refugee system to

jump the immigration queue” adding “it is not fair for those who have been waiting patiently to come to Canada, sometimes for years, when others succeed in bypassing our immigration system” (CBC, 2009). From a quantitative perspective, Minister Kenney’s statement is substantiated. Prior to the original lifting of the TRV requirement for Czech nationals in 2007, Canada received five refugee claims from Czech nationals; after the lifting of the TRV requirement, however, that number increased to approximately 3,000 in the ensuing period (CBC, 2009). Despite such a seemingly innocuous and justified measure by Canada to curb the influx of disingenuous asylum seekers from the Czech Republic, the response from the Czech Republic and the ensuing dispute suggested otherwise.

From the perspective of the Czech Republic, the principal normative retort to Canada’s visa reinstatement centered on the absence of a pre-arrival visa regime for Canadians visiting the Czech Republic. As part of the Schengen Zone, the Czech Republic does not possess the ability to unilaterally impose visa entry requirements on nationals from other states. Thus, according to the embassy of the Czech Republic in Ottawa, “holders of valid Canadian passports may enter and temporarily stay in the territory of the Czech Republic without a visa for the period of up to three months provided that their stay is of non-profit nature” (Embassy of the Czech Republic in Ottawa, 2014). Canadian citizens are entitled to visa-free access to the Schengen Zone, which comprises 26 European states (including four non-EU members—Iceland, Liechtenstein, Norway, and Switzerland). Thus, as a retaliatory measure, the Czech Republic does not possess the legal capacity to respond, in kind, to the imposition of a visa requirement by Canada. For Schengen Zone states, this is understandably frustrating—most states in the Americas, Australia, and select East Asian states are preferentially admissible to all Schengen Zone states, with no binding mandate for reciprocity.

However, the Czech government’s disdain for the visa regime surpassed normativity and rhetoric, and translated into tangible demonstrations of Czech perturbation. Specifically, three principal reactions to Canada’s visa reinstatement were implemented. In consecutive escalation, the actions of the Czech Republic began with the Czech Republic requiring a temporary visa for holders of official and diplomatic passports from Canada. Second, the Czech Republic escalated by “uploading” the grievance to the institutions of the EU, including a proposal to the Commission that all Canadian citizens be required to possess a visa prior to arrival in any Schengen Zone state (countering Canada’s TRV requirement in kind). Finally, the Czech Republic introduced the CETA negotiations into the dispute, and the willingness of the Czech Republic to prevent or delay the ratification thereof. These three responses will now be elaborated more fully.

Diplomatic/Official Passport Retaliation

The first action in the series of escalated responses from the Czech Republic involved the requirement for all holders of official and/or diplomatic passports from Canada to possess a visa upon entry. Specifically, the Czech Republic required official/diplomatic passport-holders visiting on official business to possess a visa for all trips up to 90 days in duration which, in itself, was not a contravention of the Schengen Agreement. This response served to reinforce both a tangible and ideational reaction to Canada’s visa policy. Tangibly, Canadian officials traveling to the Czech Republic were necessarily required to apply for, and be granted approval of, a visa for entry. Ideationally, this action allowed the Czech Republic to deliver the message that the Czech Republic government was clearly affected and perturbed by Canada’s visa reinstatement in July 2009. In terms of the weight and impact of this policy, the symbolic content of the policy carried more gravitas than the inconvenience of Canadian officials applying for a visa before entry. Thus, by isolating Canadian officials as

the subject of the Czech Republic’s disillusionment, the Czech Republic was able to reprimand Canadian officials without compromising the ability of Canadian citizens to have access to the visa-free regime. Despite the added inconvenience to Canadian officials visiting the Czech Republic on official business and the symbolic display of dissatisfaction, the Czech Republic did not persuade Canada to recant its visa requirement.

Supranational Uploading

As its second principal response to the TRV reinstatement, the Czech Republic appealed to the institutions of the EU to generate awareness and encourage retaliatory measures. Particularly, the Czech Republic approached the European Commission to propose the imposition of an *ad hoc* reform of its visa-free arrangement for Canadians entering the Schengen Zone. Because the Czech Republic cannot unilaterally amend its visa requirements for foreign entry, as per the dictates of the Schengen Agreement (European Parliament 2010), the Czech Republic sought to “upload” its visa dispute to the supranational level. In responding to the grievance from the Czech Republic, the Commission and EP both responded rhetorically. In October 2010, the EP issued a Written Declaration whereby it asserted that “the Commission and Council are not acting with sufficient forcibility in this matter”, adding that “further delay in the termination of the unequal status of Czech citizens could threaten the future ratification of the Comprehensive Economic and Trade Agreement between the EU and Canada” (European Parliament, 2011). For its part, the Commission requested that Canada report to the Commission on the findings of a data-gathering trip to the Czech Republic in early-2011, in which an assessment of the appropriateness of the TRV was to be ascertained. As of the publication of the Commission’s stance in November 2012, “the Commission regrets that Canada has not provided to the Commission its report on the data-gathering visit to the Czech Republic” (Commission, 2012b). Regarding the Canadian government’s failure to take serious the importance of the Czech TRV scheme throughout the institutions of the EU, the Commission echoed the EP’s warning that “the continuing lack of solution for this issue could also have an unfortunate impact on the approval and ratification process of several important EU-Canada agreements which are currently under negotiation” (Commission, 2012b), the CETA inclusive. Thus, although the European Commission did not acquiesce to the “tit-for-tat” requests of the Czech Republic, the Czech Republic was successful in garnering the attention and support of the major EU institutions. Despite the strategic considerations, the second action of the Czech Republic was unsuccessful; the Commission did not impose a Canada-specific visa regime, nor is there evidence to suggest the proposal was seriously considered.

The Fate of the CETA

In October 2013, the Czech Republic Foreign Affairs Ministry indicated the possibility it would not sign the Comprehensive Economic and Trade Agreement without Canada’s reinstatement of the visa-free entry for Czech citizens. A spokesperson for the Czech Foreign Affairs Ministry stated, on the matter of Czech interference in the CETA ratification: “If the [visa] issue is not resolved by the time the negotiations are concluded, it cannot be granted that the Czech Parliament will not postpone its ratification” (Contiguglia, 2011). Because the negotiations toward free trade agreements in the EU necessitate movement through a multi-institutional process with veto opportunities at each point, it was this fourth response by the Czech Republic that was successful in pressuring Canada toward the desired outcome, for several reasons.

First, the Czech Republic possessed the legal and institutional opportunity to execute its threat. As an EU member state, the Czech Republic is represented in the Council (most relevantly, the European Council and the Council of Ministers), in which unanimous consent is required for ratification of a free trade agreement. Further,

even without a veto, the Czech Republic would be able to have its interest represented in the European Parliament, where the CETA could similarly be halted. Thus, the Czech Republic's threat to veto the ratification of the CETA was legally and institutionally credible. The second guarantor of the success of the Czech Republic's threat to nullify the CETA ratification exists in the asymmetrical division of political and economic investment in CETA between Canada and the Czech Republic. In other words, politically and economically, the stakes of CETA are high for Canada, while comparatively low to the Czech Republic. Politically, Canadian Prime Minister Stephen Harper has, on numerous occasions, touted the CETA as the capstone of his free-trade-heavy record as Prime Minister; in October 2013, for example, Harper told the House of Commons “the agreement in principle with the EU is a milestone towards the biggest, most ambitious trade agreement in Canadian history, representing thousands of new jobs for Canadians and a half-billion new customers for Canadian businesses” (Government of Canada, 2013). In this sense, the posterity of the Harper government's most significant free-trade agreement was compromised. A more pressing political consideration is that the Canadian citizenry will be voting in a federal election in late-2015. Claiming responsibility for either the passage or failure of such a momentous free-trade agreement could prove to be worth significant electoral capital, as either a success to tout or an object of derision by opponents.

Economically, the division of interests and potential gains is, once again, asymmetrical. Both the European Commission and Canada have provided quantitative estimates of increased trade and relative parity of benefits that are to be reaped by both actors. For Canada, it is predicted that, within seven years of an active CETA, real gains may exceed \$12 billion (CDN) as well as cementing a comparable standard of legal protection (particularly with respect to intellectual property) and harmonization of regulatory benchmarks (European Commission 2014). The EU, as a collectivity of 28 member states, expects real income gains of over \$17 billion within the same seven-year timeframe. Of those expected gains in real income, though, the division of gains among the member states will be differentiated. To understand this division, observing the principal sources of Canadian imports and exports with the EU (namely goods and services) illuminates the actors that stand to gain the most from the CETA. In terms of goods, Canada and the EU partake extensively in the import/export of machinery, transport equipment, and chemicals, while services are marked by the salience of transportation, travel, insurance, and communication. For the Czech Republic, some of the aforementioned goods do form a significant source of exports to Canada (particularly iron railway products and travel). However, the significance of some of these sectors to the Czech Republic and the possibility of increased gains from the CETA are overshadowed by the triviality of the economic relationship between Canada and the Czech Republic relative to other EU actors. In 2013, for example, Canada exported approximately \$135 million to the Czech Republic, while the Czech Republic exported \$447 million to Canada in the same year (Statistics Canada 2013). By comparison, the two-way goods and services trade between Canada and the United Kingdom well-exceeds \$30 billion, with Canadian two-way trade in goods alone with Germany and France approximating \$19 billion and \$8.5 billion, respectively. The aggregate economic relationship between Canada and the Czech Republic, then, is comparatively minor, with little indication that the passage of the CETA would have a markedly transformative impact on this economic relationship.

From a cursory analysis of the economic composure of the member states in the EU, then, it is clear that the ‘Big Three’ and other more advanced economies are likely to be the main subjects of enhanced economic relations between Canada and the EU. Thus, from an economic perspective, the potential gains from the CETA are markedly higher for Canada than the Czech Republic. As is now clear, the relative costs of the halted

passage of the CETA are low for the Czech Republic, while comparatively more deleterious for the Harper government and, more popularly, the Canadian economy's prospects for significant growth. Thus, in terms of weighted preferences, the Canadian government was considerably more invested in the ratification of the CETA than the Czech Republic; the contradistinctive implication, then, is that the Czech Republic was less concerned with halting the CETA ratification than Canada.

In November 2013, the requirement for citizens of the Czech Republic to possess a visa upon entry into Canada was officially waived. It was not until four months after that the Czech Republic reciprocated when, on 14 February 2014, the short-stay visa regime (in which no visa is required for up to 90 days) was applied to diplomatic and official Canadian passports. Ultimately, the Czech Republic was successful in pressuring the Canadian government to reverse its visa requirement for Czech citizens. The fulcrum that spurred the Canadian government into action was the precarious future of the CETA passage with the possible veto of the Czech Republic. In the sequence of responses from the Czech Republic, the diplomatic efforts to resolve the visa dispute bilaterally were unsuccessful. It was the inclusion of the CETA negotiations that spurred the Canadian government into an uncompromising acquiescence to the preferences of the Czech Republic. The principal question to now be asked is this: why did the Canadian government jeopardize the ratification of the CETA for the imposition of a comparatively tertiary policy? This question will now be addressed by this article, with reference to the posited “conflation trap”.

Theoretical Sources of the “Conflation Trap”

This article posits that the outcome of the visa dispute between Canada and the Czech Republic illustrates what this article has referred to as a “conflation trap” of the institutional architecture and policy-making processes of the European Union. Principally, two main elements of this “trap” emerged salient: first, the overestimation of the EU as a unitary actor and; second, the underestimation of the capabilities of smaller member states in the EU. This article will now highlight what it believes to be the important sources and implications of these misperceptions. To demonstrate this contention most clearly, it is helpful to explore the theoretical dimension of EU scholarship in explaining this “conflation trap”.

Within the academic literature on the EU *writ large*, there continues to exist a fundamental theoretical debate among scholars as to which actor(s) are the earnest “drivers” of the depth and direction of post-state integration. The corollary to this debate surrounds which actors are salient in the policy-making process(es) of the EU. Particularly, there are two principal perspectives in this macro-level debate: supranationalists and intergovernmentalists. “Supranationalists”, in subscribing to the implications of Ernst Haas’ neofunctionalism,¹ view the locus of integrative power shifting exponentially to the supranational level. For supranationalists, then, the increasing authority of supranational institutions (such as the Commission and European Court of

¹ Neofunctionalist theory is traditionally traced to Haas’ *The Uniting of Europe* (1958), while the important and often-overlooked contribution of Leon Lindberg (1963) is typically recognized in a more piecemeal fashion. The theoretical antecedents of Haas and Lindberg, though, are compellingly associated with David Mitrany and his formulation of “functionalism” (1943). Haas and Lindberg contend that the early experience and future trajectory of European integration can best be explained by two types of “spillover”: functional and political. By “functional spillover”, Haas implies that integration in one economic area necessarily requires integration in other complementary sectors as well in order to achieve maximal efficiency. Political spillover refers to the increased politicization resulting from the preceding sectoral spillover, ultimately providing the impetus for post-state integration. Thus, the circulatory momentum of European integration is fueled by the ever-expanding spillover to accommodate efficiency maximization. Of course, the voluminous contribution of these scholars cannot fairly be reduced to a single concept; for the purposes of brevity, though, “spillover” is the sine qua non of neo-functional theory.

Justice²) has arrived at the expense of weakening member state authority in “driving” the process of integration. Intergovernmentalists, by contrast, see the direction of EU integration as—historically and presently—being subject to the preferences of, and bargaining among, the member states (Moravcsik, 1998). Intergovernmentalism, then, recognizes the creation of supranational entities, but qualifies that these institutions are firmly controlled by member states and only expand their competences under their aegis.

In the beginning years of the then-European Community, supranationalism was heralded as the theoretical mainstay of European integration—in part, for certain, to the excitable novelty of the EC in its institutional and legal competence, but also to the supranational narrative that was embraced by the ‘founding fathers’ of the European integration project. Supranational hegemony, though, was dramatically challenged in 1965. In protest against the perceivably sovereignty-challenging EC, French President Charles de Gaulle initiated the “Empty Chair Crisis” whereby French representation from the Council was removed, thus deadlocking policy-making at the European level.³ To appease President de Gaulle, the “Luxembourg compromise” was struck, which henceforth enshrined the ability of member states to veto any EC-level policy that was deemed to be detrimental to the national interest of the given member state.⁴ In 1965, then, the intergovernmental approach to understanding European integration challenged the then-hegemonic supranational logic. In the late 1980s, though, an invigorated European Commission President, Jacques Delors, initiated the Single European Act (SEA) and provided the integrationist momentum for the signing of the Maastricht Treaty in 1992. Both of these seminal moments in the evolution of the European Community/Union, through which Euro-level institutions were enhanced by greatly expanded competences, served to reignite the credence of the supranational school of thought. Since the SEA and the Maastricht Treaty, the EU has continued in its “uploading” of previously domestic policy areas into the supranational realm—the provision of a common foreign and defense policy (CFSP and CDSP), the introduction of a common currency (the Eurozone), and the increasing legislative use of QMV serve to highlight the attractive “selling points” of the supranational framework of integration.

When comparing the supranational revivalism of the late 1980s or the fierce intergovernmentalism of the mid-1960s, it is popular to suggest that the 21st century EU reflects the former more so than the latter. As the EU membership has enlarged in significant width, so too have the EU institutions deepened so as to accommodate and ensure effective harmony among 28 member states. The European Commission has become, internationally, the “voice” of the EU, with EU permanent representation in multilateral institutions increasing. When a third-party state seeks to engage with the EU, the Commission is the starting place. It is of little surprise, then, that it is easy for states to misperceive the supranationalism of the Commission as representative of the EU institutional apparatus as a whole. This article suggests that the Canadian government fell into this “conflation trap”. From the Canadian government’s perspective, a free trade agreement with the EU is negotiated supranationally, with member state grievances falling under the purview of the EU institutions

² For a revealing account of the strategic, court-led evolution of the European Court of Justice (ECJ) into one of the most unpredictably supranational and efficacious institutions in the EU (Alter, 1998).

³ De Gaulle, an ardent nationalist and intergovernmentalist, found particularly troubling the Commission-led proposal toward integrating the Common Agricultural Policy (singularly the most important EC policy for France, at the time) into the supranational apparatus of the EC. Among an array of other disillusionments with the EC, and a distaste for Commission President Walter Hallstein’s supranational zest, De Gaulle initiated a “walk-out” of the French delegation to the Council of Ministers.

⁴ Deliberately broad, the “Luxembourg Compromise” is seen as the “last resort” for member states to arrest the passage of legislation in the Council which threatens “vital national interests”.

themselves. This perception, though incorrect, is *prima facie* rational: from the late-1980s to the present, the EU has successfully intensified its supranational competences and further ambitions. The fundamental problem, of course, is that such a static perception is superficial—negotiating with the supranational arm of the European Union is only the first step in ratification of a free trade agreement with the EU. The necessary approval of the European Parliament and, most importantly, the Council accentuate the power that member states still possess in negotiating with a third-party state. Just as theoretical absolutisms are seldom fully vindicated in empirical settings, the intergovernmental-supranational dichotomy is equally fragile. While the EU has historically fluctuated between periods of supranational-led integration and member-state driven change (or stagnation), neither actor has been characterized by absolute hegemony or impoverishment. Instead, the intergovernmental-supranational debate can be understood more accurately as a spectrum. Thus, while supranationalism has been reveled (or desecrated, by a growing number) as the “face” of the EU since the late-1980s, the power and influence of member states has not disappeared. Therefore, the Canadian government perceived the historical trend toward supranationalization as vindicating the unitary actor-hood of the EU (hence, the “conflation trap”).

To demonstrate the Canadian “conflation trap”, the visa dispute with the Czech Republic is illustrative. This article posits two principal sources of the Canadian government’s overestimation of the Commission’s supranational “weight” in ushering the CETA through the ratification process. The first source of this overestimation is the aforementioned historical rise in the supranational zeitgeist within the EU. Since the late-1980s, the EU has increased its image as a unitary actor. The EU has institutionalized a common foreign policy in 1993 that has since expanded in both competence and extra-EU recognition—at present, it is not unpopular to suggest that the EU acts with a “single voice” internationally⁵. The increasing supranationalization of EU policy-making and the visibility of the EU as a unitary actor suggest that the concerns of member states are secondary to the interest of the Union as a whole; after all, the very essence of the Commission as an institution rests in the inculcation of a unitary, supranational EU. As the EU has enhanced its supranational capacities and established itself as a singular voice internationally, the Canadian government correctly recognized the increased supranationalization of the EU. Where Canada erred, though, was in mistaking the increasing supranationalization of the EU as an implication that member states are necessarily weakened—in the study of the evolution of the European integration, zero-sum assessments are rarely fruitful. Member states of the EU maintain the capacity to act independently and unilaterally in matters requiring unanimity. Of course, the supranational institutions and pro-integration actors can, and attempt to, promote Union interests and encourage supranational socialization (often referred to as “Europeanization”). However, the soft power of EU normativity can demonstrably be sidestepped when matters of national interest burgeon.

The second, and related, source of Canada’s overestimation of EU supranational coherence rests with the principal forum through which Canada has engaged with the EU in the CETA negotiations: the European Commission. As the uniquely hybridized executive, quasi-legislative, and regulatory institution serving as the quintessential symbol of European supranationalism, the mandate of the Commission is to “represent the interests of Europe as a whole (as opposed to the interests of individual countries)” (European Commission, 2014). Therefore, on a fundamental level, the Commission pursues the goals of the EU as a unitary actor. This

⁵ Here, the distinction between speaking with a “single voice” cohesively and effectively is important; cohesiveness is not a guarantor of effectiveness, in this instance. An exceptional empirical demonstration of this distinction can be found in Smith (2006).

is not to suggest that the Commission ignores or trivializes the prerogatives of member states; rather, the Commission is committed to the preservation and expansion of the supranational competences of the EU. Thus, it is fathomable that the Canadian government believed the fate of an EU-level agreement rested within the jurisdiction of the EU-level organ it was negotiating with, which is to say the Commission. When the Czech Republic vocally threatened to halt the ratification of the CETA, though, it became abundantly clear that individual member states are not subject to the wholesale dictates of a supranational entity. Instead, member states of the EU theoretically possess a diplomatic advantage in that bilateral disputes that are not resolved bilaterally can potentially be uploaded and ultimately resolved supranationally. This two-level advantage was particularly salient in the Canada-Czech visa dispute. The Canadian government was negotiating directly with the European Commission, while at the same time engaging in a bilateral dispute with the Czech Republic. Based on the very existence of the visa dispute with the Czech Republic, the Canadian government did not predict that these two bilateral relationships would intercept. When the Czech Republic announced its intention to veto the CETA without relinquishment of the visa requirement for Czech citizens, the Canadian government faced the enmeshment of two ostensibly insulated bilateral relationships into a trilateral dynamic—it became clear, in other words, that the bilateral progress on the CETA with the European Commission was to be futile without mollification of the Czech Republic.

This article has suggested that the Canadian government overreached in its assumptions of a unitary European Union. Historically, though, such an assumption is not without substantiation; through the oscillations of European integration, the last several decades have been defined by an abundantly supranational zeitgeist. However, the trend towards supranational governance at the EU level has not compromised the resilience of member state authority within the intergovernmental forums of the EU. Precisely, the necessity of unanimous assent in the Council endows each member state, regardless of size or stature, with the opportunity to arrest legislation. Thus, the perception of unity and supranational authority by third-party states must necessarily be qualified; member states continue to exercise significant authority within intergovernmental institutions and realms of the EU.

Conclusion

This article sought to delineate the circumstances that compromised the CETA negotiations between Canada and the European Union. Specifically, this article focused on the reactive threat of the Czech Republic to veto the passage of the CETA in light of the reinstatement of visa requirements for Czech citizens entering Canada in 2013. In outlining the circumstances that spawned this diplomatic about-face, a fundamental shortcoming in the Canadian government’s approach to negotiating with the EU was revealed: the Canadian government overestimated the unitary nature of the EU as a bilateral actor. In negotiating directly with the European Commission—the bulwark of supranationalism in the EU—the power and autonomy of individual member states were overlooked as veritable obstacles to the ratification of the CETA. This article does not intend to suggest that the Canadian government was unaware or lacked the knowledge of the intergovernmental aspects of EU-level policymaking. Instead, it is perhaps more accurate to posit that the Canadian government overestimated the supranational glue of the EU, while simultaneously underestimating the intractable role played by individual member states. The result, as this article has demonstrated, compromised the politically important negotiations toward the CETA. In light of this article’s analysis of the visa dispute between Canada and the Czech Republic, several conclusions deserve consideration.

First, the elusiveness in typologizing the EU in diplomatic terms understandably creates ambiguity and confusion for third-party states' foreign relations with the EU. The theoretical extremities in classification of the EU are each rife in empirical caveats and exceptions. Proponents of a supranationalized EU as an explanatory conceptualization of what the EU 'is' are oftentimes humbled by the intermittent (though no less consequential) overriding of EU-level priorities by domestic interests of individual member states. The Canada-Czech Republic visa dispute is one such instance. At the other theoretical extremity—the “inter-governmentalist” approach to EU categorization—the supranational apparatus of the EU is largely ceremonial and handcuffed by the prerogatives and wills of the 28 member states that it serves. Again, the evolution of policymaking at the EU level (such as the increased preponderance of Qualified Majority Voting, or QMV) has provided opportunities for the EU supranational apparatus to advance its agenda in the face of opposition from member states. Theoretical hyperbole is misleading, and these two approaches are no exception. The reality, then, is that the EU, as an actor, vacillates uncomfortably along a spectrum of theoretical polarities, eluding an authoritatively convincing or accepted characterization. The movement from theory to diplomatic practice is equally fluid; the EU exhibits a foreign policy not unlike a recognized sovereign state, but the institutional and legislative mechanics underlying the unitary façade quickly disturbs this categorization. Thus, just as the scholarly indecisiveness in categorizing the EU pervades, the task of assessing the EU from a diplomatic perspective is no less cumbersome. It is evident, then, that the ambiguity in what the EU actually “is” can translate into misguided assumptions and erroneous expectations about what the EU actually “does”.⁶

A second key conclusion from this article is that the Canadian government did not perceive its reinstatement of a visa regime with the Czech Republic as compromising the future of the CETA negotiations and ratification. There are three key sequential elements to this conclusion. First, the Canadian government clearly did not expect such a vociferous, swift, and threatening response from the Czech Republic. The governments of EU member states Romania and Bulgaria, for example, have not expressed a similarly-amplified dissatisfaction with the Canadian visa regime that continues to be applied to their citizens. Thus, in the Canada-Czech Republic visa dispute, it is important not to discount the successfully strategic host of responses from the Czech Republic. Second, the Canadian government did not expect the Czech Republic to upload the visa dispute to the EU level by successively insisting that a visa regime be implemented for Canadians in all Schengen Zone border crossings and, eventually, introducing the fate of the CETA into the stakes of the dispute. Third, the Canadian government was unprepared for the role played by individual member states, especially member states with ostensibly minor grievances against Canada. The Canadian government learned that the ongoing health of negotiations with the Commission, coupled with the tacit support of the “Big Three”, were necessary but not sufficient components to ratification of the CETA. Accordingly, this article has suggested that there existed a “conflation trap” whereby the Canadian government, in overestimating the Commission-led unitary actor-hood of the EU, neglected the critical importance of member states in the CETA ratification process.

Still, the picture is incomplete. Why, for example, was the Czech Republic unabashed and swift in its response to the Canadian government's visa reinstatement, while other member states (such as Romania and Bulgaria) remain docile in their progress toward a visa-free regime with Canada? Further, why did the European Commission refrain from inheriting a stronger role in the lead-up to and evolution of the visa dispute?

⁶ Karen Smith (2005) makes a convincing case for shifting the scholastic discourse on EU foreign policy-making away from typology-fitting and categorization and instead focusing on the manifest output of policy-making.

With its supranational mandate in mind, the ratification of the CETA was a preferential outcome for the Commission and direct, mediation-based intervention in the bilateral dispute would have enhanced the prospects of a successful outcome to the CETA negotiations and ratification. These questions, if and when answered, will enhance the ability of future research to further understand the dynamics surrounding the Canada-Czech Republic visa dispute, as well as shedding light on the nature of third-party negotiation with the European Union. In anticipating this future research, though, this article has nevertheless attempted to offer an explanatory framework for the Canada-Czech Republic visa dispute by highlighting the proposed “conflation trap” Canada faced in overestimating the unitary actor-hood of the EU, while simultaneously underestimating the role and power of smaller member states.

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