



European Trade Union Confederation (ETUC)
Confédération européenne des syndicats (CES)

Brussels, 21 November 2011
BS/JKD/sw

Dear Sir/Madam,

We are writing to you to express our concern at the discussions in the Trade Policy Committee on public services and the Canada-EU Free Trade Agreement (CETA).

The European Commission has argued (EC papers February and October 2011) that the current way in which public services are dealt with in free trade agreements is no longer defensible and it has proposed a number of alternative approaches.

These different approaches have been the subject of ongoing, and shifting, debate with Member States but there has been no information or dialogue with civil society. This lack of transparency is unacceptable. In our view the Commission should issue a Green Paper or other form of public consultation document on the objectives and possible impacts of proposed changes on the wording relating to public services in free trade agreements. The central starting point for such a consultation is: is the current level of protection for public services sufficient? If not, how can it be improved? And, how can EU build on the principles of the SGI Protocol, the Fundamental Rights Charter and its human rights strategy to ensure that EU trade policy defends public services and the values they represent, as part of the European model and intrinsic to the development of sustainable societies?

We are concerned that the CETA proposals on public services, and in particular the development of a 'negative list' approach, will reduce the policy space for public authorities to provide and regulate public services in the general interest. The EU's legal framework on public services is built on the premise that Member States have broad freedom to define, organise and regulate public services. This premise risks to be undermined by CETA because it is just not possible to set in stone, or foresee, shifting public needs. While there are striking needs for safeguarding broad policy space for the definition, organization and regulation of public services, these agreements aim for long-term binding, expansive liberalization commitments in all sectors. Indeed the requirement on pressure to do so in free trade agreements runs counter to the 'raison d'être' of public services. Therefore, any changes to the way the EU trade policy deals with public services must be fully carefully, and fully, considered.

Attached to this letter you will find a study from Professor Markus Krajewski that questions the motivation for the new approach proposed by the EC, analyses different approaches taken in a number of free trade agreements to protect public services, and put forwards two proposals for positive changes to EU trade policy that could be discussed further. The study

and other related documents are also available on <http://www.epsu.org/a/8045>. In summary, the proposals argue for:

1. Legal clarity and broad carve-out

Limitations of Specific commitments

1. replace “public utilities” with “public services“ and maintain non-exhaustive explanatory list
2. cover all market access and national treatment restrictions and national treatment
3. apply to all levels of government

Exclude public services from general obligations as appropriate (e.g. USO not considered “more-burdensome than necessary“)

2. Simplify procedure to modify commitments

Aim: Reduce impact of binding obligations

Steps:

1. announcement of intention to modify schedule
2. collection and consideration of comments
3. compensation for proven individual loss of investors on basis of national law (no negotiations for „virtual“ compensation as in Art. XXI GATS)

Effects

- transparency
- legal clarity maintained
- reduction of „regulatory-chill“ and „locking-in“ effects

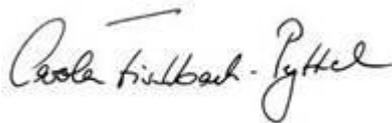
We would ask you to press for a public debate on the issues raised by the Commission in the CETA negotiations and ensure that the protection of public services is strengthened, not weakened, in any eventual agreement.

We would be pleased to provide you with further information,

Yours sincerely,



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ETUC General Secretary



Carola Fischbach-Pyttel
EPSU General Secretary