



Trade Justice Network
Réseau pour le commerce juste



To the Members of the European Parliament
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To the Members of the Canadian Parliament

Sent individually by e-mail

Ref: CFP/PC/ak

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Dear Member,

EU-Canada Comprehensive Economic and Trade Agreement (CETA): not in the public interest

The Canadian Government and the European Union are well down the road towards negotiating a Comprehensive Economic and Trade Agreement (CETA). Canadian and European civil society organisations have serious concerns about the potential impact of the Agreement on citizens' well-being and the public interest. Our main concerns are outlined below:

- The current proposals reduce policy space for public authorities, and especially local authorities, to provide and regulate public services in the general interest. The CETA is expected to be based on a 'negative list' approach to public services, which means all that is not excluded is covered. It has been argued that this is necessary to improve the current wording of the 'public utilities clause', but the new approach is not an improvement, on the contrary it is a big step back. If a city or government makes a small error and forgets to list any of the thousands of programs they deliver, then that program is covered by the deal and companies will be able to bid on the delivery of the service. If a city or government wants to develop a new program in an area that it has not listed, it will be liable to pay compensation for any company whose right to make a profit is affected by the new program.
- 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 will be undermined by CETA – and subsequent trade deals – because it is just not possible to set in stone, or foresee, public needs, and indeed this requirement is against the 'raison d'être' of public services. Both EU and Canadian citizens need to see broad exclusions of public services from any agreement as well as sufficient policy space to define and regulate public services in the future.¹ It is

¹ These arguments are developed in a study by Professor Markus Krajewski University of Erlangen-Nuernberg (see http://www.epsu.org/IMG/pdf/PublicServicesFTAs_FinalVersion-2.pdf and <http://www.epsu.org/r/230> for further information).

particularly important that any 'grey' areas are avoided: healthcare for example needs to be entirely excluded, irrespective of organisation or type of funding.²

- The proposed CETA is not so much about trade as it is about putting limits on the ability of governments to control the actions of large corporations. It's not really about tariffs and borders, it's about adding to the list of things that governments can't do if they interfere at all with the corporate sector. On both sides of the Atlantic there is growing evidence of the failure to control market behavior. More, not less, public intervention will be necessary to effectively respond to the current overlapping crisis (financial, economic, social, ecological). CETA would tie politicians' hands behind their backs. This proposed deal would for the first time apply directly to sub-national levels of government. In Canada that will include Provinces, but for both parties it will include cities, and government corporations, and local bodies controlling schools or hospitals. In particular the Canadian government and the European Commission are discussing access to 'procurement' by all these levels of government. That means that, for example, Canadian cities would lose their right to use taxpayers' money for the benefit of local taxpayers. The proposed CETA would prohibit governments at all levels from spending tax income to encourage local development. The EU is about to amend its legal framework on public procurement and there is broad support in the European Parliament for strengthening the contribution of procurement in local and sustainable development. If the EU is tied to international trade commitments that do not build in sustainability as a key objective, this objective will be more difficult to achieve. Supporters of CETA have argued that liberalisation makes local public services more competitive and therefore more "efficient." We point out that research shows that such claims are not supported by evidence³ and indeed there are trends in Europe to remunicipalise local services.⁴
- The proposed agreement would include the right of individual companies to challenge decisions of the democratically elected governments. This proposal is referred to as the investor-state provision. A successful challenge by a company can result in multi-million dollar damages. This kind of provision already exists in NAFTA; Canada has paid millions of dollars to companies for deciding to ban toxic waste, and for banning a gasoline additive that was a known carcinogen, and for taking back the water and timber rights of a company that walked away from its

² The recent survey in Canada also shows overwhelming support for public solutions to healthcare <http://healthcoalition.ca/wp-content/uploads/2011/11/NANOS-FR.pdf>>

³ Researchers in Denmark examined the findings of 80 studies published since 2000 that analysed the impact of contracting out. They considered the evidence in terms of cost savings, impact on quality and outcomes for the employees affected. They also looked in particular at possible differences in results in relation to technical services and social services. The findings of this major review of the impact of contracting firmly calls into question the benefits of getting the private sector to deliver public services. See <http://www.epsu.org/a/8011>
A recent report by *Ethical Consumer* magazine in the UK has put 20 of the biggest of companies delivering public services through public contracts under the spotlight and exposed some of their shortcomings under a range of social, ethical and environmental criteria. See <http://www.ethicalconsumer.org/CommentAnalysis/Features/IsThatWhatYouCallGoodService.aspx>

⁴ A little after a decade after the onset of liberalisation and privatisation, the German energy sector is experiencing a return to public and communal ownership. Since 2007, 44 new local public utilities have been set up and more than 100 private concession contracts for energy distribution networks and service delivery have returned to public hands. See <http://www.epsu.org/a/8011>

obligations in Newfoundland – all because those decisions were challenged by companies. In Europe Sweden's state-owned energy company Vattenfall is reportedly planning to take the German government to the International Centre for Settlement of Investment Disputes over the closure of its nuclear power plants.⁵ The Canada- EU Sustainability Impact Assessment recommends against including an investor state dispute mechanism, noting that companies in both Canada and the EU have adequate legal recourse under the court systems. The Assessment recommends only the usual state-to-state dispute mechanism.

We strongly request that you should insist that the rush to sign this new Comprehensive Agreement be halted until at least the unacceptable features we refer to are removed from the table. We would be happy to provide any further information or analysis that you would find useful.

We also respectfully suggest that you challenge the lack of transparency regarding the proposed content of CETA. On the EU side, there have been at least three European Commission papers regarding the proposed changes on public services but not one of them has been made available to civil society.

We thank you for taking the time to review this issue.

Yours sincerely,

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⁵See <http://www.thelocal.se/37126/20111103/#>