

**Submission to Standing Committee on International Trade**  
**Regarding the Canada-European Union Comprehensive Economic and Trade Agreement (CETA)**

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**Introduction**

Founded in 1985, the Council of Canadians is Canada's largest citizens' organization, with tens of thousands of members from coast-to-coast-to-coast. We work locally, nationally and internationally to promote policies on fair trade, access to clean water, energy security, public health care, and other issues of social and economic concern to Canadians.

Since negotiations on the proposed Canada-EU Comprehensive Economic and Trade Agreement (CETA) began in 2009, we have come to understand CETA not as a simple trade deal, but more broadly as an agreement on economic governance. CETA will set new legal limits on social and environmental policy in ways that compromise our democracy. For this and other reasons, the negotiations have been criticized by a growing number of environmental, labour, Indigenous, student and farmers' groups on both sides of the Atlantic.

A recent collective request from a few dozen Canadian groups to meet with Canada's international trade minister was turned down on the grounds that we all have access to Canada's top CETA negotiator in briefings following each of the past nine rounds. However, during the last briefing with DFAIT in October, civil society groups were told there are no plans to produce a report summarizing their feedback, as is the norm in the European Union. The negotiators were not even taking notes of what we were saying.

So these parliamentary hearings into the CETA negotiations are truly the first opportunity for groups like the Council of Canadians to go on record with their concerns. While we have publicly called for the negotiations to stop and for an informed public debate to decide the scope and content of any deal with the EU, I recognize the committee is not likely to take this same position. I would like to use this opportunity instead to propose a few changes to Canada's negotiating position that would limit the potential for CETA to undermine the public interest in a number of important areas.

### **1. Transparency**

Canadian MPs should have the same access to CETA documents as their European Union counterparts. For example, I understand that members of the EU trade committee have access to Canada's and the provinces' services and investment offers, and potentially their procurement offer as well. The former were exchanged shortly before the last round of CETA negotiations in October. Procurement and goods offers were exchanged in July. Access to those offers would provide this committee with a much better sense of the scope of the proposed agreement, including where it may fall short in the protection of public services or strategic sectors, which I will get to in a moment. I have not seen this information but it's difficult to understand why Canada's trade committee should not be able to see information that MEPs are studying right now in Brussels.

### **2. Investment Protection**

There should be no investor-to-state dispute process in CETA as there is in NAFTA and Canada's other trade agreements. This is the preference of the EU parliament as expressed in a June 8 resolution on the Canada-EU trade deal.<sup>[1]</sup> The resolution says that, "given the highly developed legal systems of Canada and the EU, a state-to-state dispute settlement mechanism and the use of local judicial remedies are the most appropriate tools to address investment disputes."

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<sup>[1]</sup> See the text of the resolution here: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0257+0+DOC+XML+V0//EN&language=EN>

The same advice was provided to the European Commission in a Sustainability Impact Assessment of CETA by a consulting firm. The report, released this summer, states there is “no solid evidence to suggest that [investor-state dispute settlement] will maximise economic benefits in CETA beyond simply serving as one form of an enforcement mechanism.” The assessment adds that policy space reductions caused by this dispute process “would be enough to cast doubt on its contribution to net sustainability benefits.”<sup>[2]</sup>

Investment protections in trade agreements or standalone bilateral treaties give foreign investors incredible rights to bypass local courts in order to sue sovereign states before international tribunals if they feel they have not been treated fairly. The lack of clarity in what constitutes fair treatment, and the lack of transparency in the proceedings, has given arbitrators enormous leeway in deciding what constitutes acceptable government policy. Investors are increasingly using this kind of arbitration to challenge social, environmental and economic regulations that affect their profitability.

This committee recently studied last year’s \$130-million settlement with AbitibiBowater under NAFTA’s Chapter 11 investor protections. Since then, Ontario has been the target of an expensive \$275-million NAFTA claim by a Brazilian-owned cement firm because it was denied approval for a quarry outside of Hamilton, Ontario. And we learned this week that Philip Morris will be suing the Australian government under a bilateral treaty with Hong Kong because of the former’s plain packaging law for cigarettes.

I urge the committee to consider the position of the Australian government on investor-state arbitration. Partly in response to the threat of an investment challenge by the cigarette maker, the Gillard government released a new trade policy document in April that discontinues Australia’s former practice of negotiating investor-state dispute procedures in trade agreements. The policy says:

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<sup>[2]</sup> Final SIA report (pg. 337): [http://www.eucanada-sia.org/docs/EU-Canada\\_SIA\\_Final\\_Report.pdf](http://www.eucanada-sia.org/docs/EU-Canada_SIA_Final_Report.pdf)

*If Australian businesses are concerned about sovereign risk in Australian trading partner countries, they will need to make their own assessments about whether they want to commit to investing in those countries.<sup>[3]</sup>*

In other words, the Gillard government believes it is not its job to absorb the risk that firms take when investing in foreign countries. The new trade policy also insists that foreign firms operating in Australia should be entitled to the same legal protections as domestic businesses. Investment treaties, on the other hand, discriminate against local firms by giving foreign firms more rights to challenge government policy.<sup>[4]</sup>

If this committee is not prepared to recommend against investor-state protections in CETA, it could push for simple reforms to the process. For example, Canada and the EU could agree that firms must exhaust local legal remedies before moving to investment arbitration, as the EU parliament's resolution suggests.

### **3. Public Services and Water**

The public services exception in CETA needs to be broad and precisely worded to protect the right of governments to regulate in areas such as health care, education or water delivery and sanitation. Provincial and local governments must also insist on maximum space to maintain or create new public monopolies or universal programs in these areas – even where some degree of private-sector involvement currently exists. If Canada's reservations are too narrow, unclear or incomplete when it comes to public services, we risk inviting expensive compensatory claims by investors that feel government regulations or social services interfere with their profits.

On water, it is our understanding that the EU has taken a broad exclusion for water services and utilities, not only to protect existing public utilities from competition from the private sector, but to make sure governments at all levels have the right to remunicipalize previously privatized utilities in the future. We

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<sup>[3]</sup> Trading our way to more jobs and prosperity, Gillard Government Trade Policy Statement, April 2011, pg 14: <http://www.dfat.gov.au/publications/trade/trading-our-way-to-more-jobs-and-prosperity.pdf>

<sup>[4]</sup> Ibid, pg. 16

understand Canada has not taken a similar reservation in its own offers to the EU. We feel this example underlines the importance of this committee having access to the Canadian and EU offers so that it can play a stronger role in assessing the risks and benefits of the proposed trade agreement.

#### **4. Local Procurement**

This committee has heard several witnesses already on the issue of procurement. We share the view that procurement commitments at the municipal level and lower—the so-called MUSH sector—are not worth the sacrifice to local autonomy and policy space.

In almost all cases, local procurement happens in Canada in a completely transparent and fair way. There are no restrictions to EU firms bidding on Canadian contracts. And in the vast majority of cases, municipal councils make decisions based on value for money.

The net result of CETA commitments on procurement will be to prohibit local governments from adopting “Buy Local” or “Buy Canadians” policies, or from otherwise considering the value of local, sustainable development when tendering for goods, services or construction projects over certain thresholds. Japan’s WTO challenge of the Ontario Green Energy Act, which the EU joined this fall, shows how the EU will use trade and procurement rules to undermine job-creation strategies in their trading partners.

Who loses from a blanket prohibition on local hiring or content requirements? Mostly it will be small and medium-sized businesses as they are out-bid by their considerably larger European counterparts. This is already happening in Canada in the P3—Public-Private Partnership—market, according to the Canadian Construction Association.<sup>[5]</sup> The Sustainability Impact Assessment I referenced earlier also predicts bigger gains for EU firms.

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<sup>[5]</sup> Canadian Construction Association discusses training, public-private partnerships, by Kelly Lapointe, Daily Commercial News: <http://www.dcnonl.com/article/id47542/--canadian-construction-association-discusses-training-public-private-partnerships>

Municipal governments are clearly a bargaining chip in CETA in exchange perhaps for modest gains for fish, pork or beef exports. The Council of Canadians believes that instead of pursuing policy space-limiting procurement deals, Canada should encourage “Buy Canadian” policies on major municipal infrastructure or other projects funded in whole or in part by the federal government.

Finally, I understand the Federation of Canadian Municipalities has made its support for CETA conditional on seven principles being met in the agreement.<sup>[6]</sup> These include progressive enforcement, a municipal role in dispute settlement, and protection for strategic industries or sensitive projects.

Without access to the offers on procurement, services and investment it’s difficult to know if this last condition has been met for which sectors and by which provinces. We strongly feel this committee should take seriously the preference of a growing list of municipalities, including the Union of B.C. Municipalities, to exclude the MUSH sector entirely from CETA’s procurement chapter.

## **Conclusion**

The Council of Canadians will continue to campaign for transparency and an end to the EU trade talks until the public has had a chance make an informed decision about whether they are in Canada’s best interests. Experience with past trade deals shows there is little to no room in Canada to make amendments once a deal is signed.

Clearly CETA is about much more than trade. As such, I hope this committee considers how it might take on a greater role in studying the negotiating texts as their European counterparts are doing, and in proposing amendments where suitable to protect public services and other important policy areas.

Thank you.

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<sup>[6]</sup> FCM Backgrounder: [http://www.fcm.ca/Documents/backgrounders/backgrounder\\_CETA\\_EN.pdf](http://www.fcm.ca/Documents/backgrounders/backgrounder_CETA_EN.pdf)