

CUPE Ontario and the Council of Canadians Present...

Say bye to buy local

How secret trade deals threaten our local economies, jobs and the environment and weaken our community

A Primer on
Trade Deals
Impacting Ontario



CUPE·SCFP Ontario
Canadian Union of Public Employees • Syndicat canadien de la fonction publique

THE COUNCIL OF CANADIANS
 LE CONSEIL DES CANADIENS

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Dear concerned Ontarians,

We are pleased to offer this booklet that provides analysis on Canadian trade agreements and the impact they have on local economies and our communities.

We are currently suffering multiple crises – an economic crisis that threatens our jobs and livelihoods, an environmental crisis that threatens our habitat, and an energy crisis that demands we move away from fossil fuel and a reliance on long-distance trade.

In times like these, we need our municipal, provincial and federal governments to be innovative and responsive to the communities they represent, as well as the international community we are all part of. We need governments to recognize, like so many people already do, that many of the solutions to all these crises are going to be local solutions.

Unfortunately, the Ontario government is now signing and endorsing interprovincial and international agreements that will restrict what provinces and municipalities can do to protect the environment, save existing jobs and create new ones, strengthen public services, and support local economies. These agreements say that local solutions are “barriers” to trade and investment and must therefore be eliminated. Democratic solutions lose out to business-friendly objectives.

The purpose of this booklet is to review specific trade agreements including the Ontario-Quebec Trade and Cooperation Agreement, the Canada-European Union Comprehensive Economic and Trade Agreement, and the North American Free Trade Agreement, as well as a proposed agreement on local procurement. We will examine the impacts they will have (or, in the case of NAFTA, are having) on Ontario communities and our ability to promote local priorities. We will show how these agreements, and the market-based priorities they represent, impose broad constraints on the exercise of local democracy under the rubric of addressing trade barriers.

Ontarians have a right to discuss and debate these agreements, and should have the power to modify, expand on or cancel them if they’re not in the province’s interests. These agreements should not be negotiated and signed behind closed doors – which is currently happening – because the impacts of these internal and international agreements are broad and often incompatible with social goods, such as stimulating local economies, maintaining a universal and publicly funded health care system, and protecting the environment. People have a right to know all the details before any deal is signed.

We invite you to stand with us and demand a say in Ontario’s future.



**Maude Barlow,
National Chairperson,
the Council of Canadians**



**Sid Ryan,
President, CUPE Ontario**

Background

Canada's trade liberalization agenda

A recent history of the expanding definition of "trade barrier"

Over the past few years, and most certainly with the Conservative Harper government, Canada has increased its commitment to a liberalized trade agenda – one that puts higher emphasis on business priorities over public interest.

This policy shift comes as the word "protectionism" gets used with increasing frequency in Canada.¹ Often it's in reference to "Buy American" policies in U.S. economic stimulus legislation, which require that steel and other industrial products bought with federal infrastructure money be made in the U.S. But as U.S. President Obama and other national leaders grapple with how to respond to the economic, environmental and energy crises affecting our world, we see that many forms of government policy are coming under fire as "protectionist."

Here are some examples:

- Former U.S. vice presidential candidate Sarah Palin complained about the import duties in the United States on Chinese tires that are produced in a less environmentally friendly manner than American tires.
- Pesticide bans in Quebec are targeted as obstructions to corporate profit.
- Canada's public health care system is challenged under NAFTA as representing an unfair monopoly that shuts out American insurers and health care providers.
- Energy legislation in the U.S. that could curb imports of tar sands oil on the grounds that it is too carbon intensive (which really puts the true environmental cost of the tar sands in very mild terms) is decried as protectionism.
- The Canadian government continues to complain about U.S. state or municipal protocols that encourage governments to procure goods or services locally for the sake of boosting the U.S. economy and creating new jobs.

Most of us would probably recognize these government policies and measures as reasonable forms of protection. They are designed to protect people from environmental abuse, and to protect workers from economic shocks. Public policy that fosters local economic growth is also commonplace, with every major economic power, including the United States, the European Union, China and Canada, using it. But Canadian provinces and the federal government are now busy signing and negotiating new trade agreements that would undermine environmental, social and economic policies designed to protect, develop and enrich local communities while fostering more sustainable practices. The question is: why?

What is behind Canada's internal and international trade agenda?

Canadian trade officials at the federal and provincial level are working furiously to establish a comprehensive set of federal, provincial and territorial agreements on trade, investment and labour mobility. These agreements stem from the 1995 Agreement on Internal Trade (AIT). The aim of the AIT was to eventually bring provincial and municipal governments (and their agencies) in line with international trade regimes that limit public policy options affecting business.

¹ Taken in part from the 2009 report "State of Play," by trade lawyer Steven Shrybman, available on the Council of Canadians website: www.canadians.org.

Under these new interprovincial agreements, the provinces (and sometimes even large corporations or individual investors, as in Alberta and B.C.) can invoke new dispute procedures to challenge government policies and actions, even ones that make things better for the public – from protecting the environment, water and public health, and providing public services such as health care and child care, to using public funds to stimulate local economies. Trade officials describe their initiatives as “trade liberalization” – an agenda that would limit the role of government by promoting policies of deregulation and privatization.

Increased deregulation of financial services, for example, stems from a blind faith in market logic to sort out how and where money is invested (or drastically yanked out of national economies). Letting so-called market realities regulate how energy is produced and distributed is also part of this laissez-faire (do nothing) logic. This is, of course, precisely the policy approach that has been disastrous for domestic and global economies, and what has played a key role in forestalling meaningful efforts to address climate change and other pressing ecological challenges.

But the federal government and many provinces continue to champion these same “free trade” policies, and are seeking to entrench them in internal trade agreements for the purpose of letting businesses do what they want while constraining the policy and regulatory options of present and future governments. Trade officials have “strengthened” the AIT with new labour mobility and dispute resolution chapters that again privilege trade flows over other social goals. Several provinces are also negotiating bilateral free trade agreements – such as the Trade, Investment and Labour Mobility Agreement (TILMA) between Alberta and B.C., and the recently signed Ontario-Quebec Trade and Cooperation Agreement – which both push trade liberalization even further than the AIT.

These agreements were signed based on a myth. In reality, there are few barriers to interprovincial trade, investment and labour mobility. Canadians are free to live, work and invest anywhere they choose in this country. There are no customs stations along provincial borders and no tariffs on interprovincial trade. The real goal of domestic trade liberalization is set out in one simple TILMA Article that gives investors the right to challenge regulations they do not agree with. This article is reproduced in the Ontario-Quebec pact under the heading “No Obstacles:”

“Each Party shall ensure that its measures do not operate to restrict or impair trade between or through the territory of the Parties, or investment or labour mobility between the Parties.”

When you think of it, virtually any government action can be seen as offending this clause. After all, everything a government does is likely to affect the market, or “investment,” in some manner. That means that all government policy could be seen as protectionist!

What you can do

This booklet is designed to help you understand this internal trade agenda and how it relates to new international agreements such as the Canada-EU Comprehensive Economic and Trade Agreement and the proposed procurement agreement with the United States. We will provide you with tools to fight these unfair trade deals as well as strategies on how to create fair trade communities and a fair trade future for Ontario. We will show how there are very real and pressing risks to a number of community initiatives, including “buy local” policies, which are designed to boost local economies or foster sustainable development, create local jobs and promote strong public services, and ways you can press your elected politicians into action on these issues.

The Trade Deals

The Ontario-Quebec Trade and Cooperation Agreement

On Friday, September 11, 2009, the Ontario and Quebec governments signed a Trade and Cooperation Agreement (OQTCA) “aimed at eliminating and reducing barriers that restrict trade, investment and labour mobility.” This was the first time the deal had been made public, though it went into effect less than three weeks later, on October 1. There was no government white paper either before or after Premiers McGuinty and Charest signed the deal in Toronto, and barely any explanation of why such an agreement was necessary, or what it would accomplish.

But with the exception of a few high profile labour mobility disputes, there are few real barriers to cross-border trade with Quebec. Those that do or did exist – differences in margarine colouring rules, for instance, or trucking specifications – have either been eliminated already or they are being negotiated by other means. The real goal of both the Ontario-Quebec agreement, and the Alberta-B.C. Trade, Investment and Labour Mobility Agreement on which it is based, is to drastically constrain what provincial and local governments, as well as school boards and other agencies, can do to regulate business activities, including the activities of large multinational companies.

Rule #1 – No Obstacles

The powerful tool by which so called barriers to trade, investment or labour mobility are to be eliminated is a “No Obstacles” article in the agreement, which states that “each Party shall ensure that any measure it adopts or maintains does not operate to create an obstacle to trade, investment and labour mobility between the Parties.” This exposes virtually everything that governments do to attack because every government action, from regulating toxic substances to land use planning, affects the market (i.e. private commercial or investor interests.)

A bottled water ban at a local City Hall, for instance, operates as an obstacle for Quebec-based bottled water companies looking to sell their product and could be challenged even if the local policy does not discriminate in favour of Ontario water bottlers. An even greater danger exists from Quebec-based private health insurers who could challenge Ontario’s ban as an impediment to cross-border investment. In this way, the “no obstacles” requirement also threatens public sector services which often formally (in the case of a ban on private health care insurance) or informally, as in public funding and other support for non-profit child care, curtail competing private sector services.

By asserting the priority of commercial objectives, the OQTCA seeks to prioritize business and investment interests over all other societal values and goals, including public health, environmental protection, local economic development, and so on.

The assault on government regulation

Under OQTCA, new hurdles will be placed before the passage of legislation or other measures affecting business. This includes passing new rules by a joint private sector consulting group. Then, measures that survive the gauntlet of internal review can be attacked by private tribunals invoked by the other province (inevitably at the request of private interests opposed the measure.) To survive these review

processes, governments and other regulators will have to exert time and money to prove they are the “least trade restrictive” measures possible, and that they impose minimally on investors.

The Ontario and Quebec governments are responsible, under OQTCA, for putting in place measures that will ensure the compliance of their government entities should a private interprovincial trade panel rule against a law or policy as an unlawful barrier to trade, investment or labour mobility. Penalties for ignoring a ruling can reach \$10 million. It is counter to any notion of democracy to allow non-elected trade panels to decide what is and is not legitimate public policy, and then to fine elected governments when their policies are deemed unlawful barriers to trade and investment.

The laws in question won't all be trade related either. By including the environment and sustainable development as one of six specific commitments, the OQTCA has empowered private tribunals to second guess policy and law makers as to whether a particular environment law or regulation is no more trade restrictive than necessary to achieve its goal. In other words, to successfully defend a measure under this test, a province confronts the daunting challenge of proving a negative – namely that there is no other option available to achieve the objective that would be less restrictive of trade, investment and labour mobility. An education campaign on the environmental impact of bottled water is clearly less hurtful to business than a bottled water ban at City Hall, if much less effective.

What you can do

The essential thrust of the Ontario–Quebec agreement is to promote policies of de-regulation and privatization that diminish the capacity of present and future government to exercise their authority to address the social, economic and environmental needs of the province. Public consultation is badly needed before the Ontario-Quebec Trade and Cooperation Agreement can be allowed to come into effect. We must demand that the McGuinty government put this agreement on hold until those debates can happen. Write to your MPP, call their constituency offices, and ask them to organize a public forum to discuss the Ontario-Quebec Trade and Cooperation Agreement before it is ratified.

The Canada-European Union Comprehensive Economic and Trade Agreement

Privatization, not higher standards, the main goal of Canada-EU free trade talks

On May 6, 2009, at a Canada-EU Summit in Prague, Czech Republic, Prime Minister Stephen Harper announced the official launch of negotiations toward a new generation trade agreement with the European Union. It was the culmination of two years of quiet talks between the two governments and their respective private sectors on what “closer future EU-Canada economic integration” might look like. A first round of negotiations was set for October 19-23, 2009 in Ottawa, with a final agreement expected by the end of 2010.

Based on a joint report tabled at the October 2008 Canada-EU Summit in Quebec City, and a subsequent joint scoping exercise released in May 2009, we know the proposed Comprehensive Economic and Trade Agreement (CETA) will go much further than NAFTA in the guarantees it will give to Canadian and European corporations that public policy at all levels – from your local high school and city up to the federal government – does not interfere with trade and investment.

Why can't we be more like Europe?

When asked, most Canadians say we should be trading more with Europe. But, as we've seen already, trade agreements are less about real trade barriers such as tariffs (taxes on imports) and more about other government policies that affect business profits. These can include differences (however small) in labour, health, safety or environmental rules and regulations. The aim of the Canada-EU negotiations is partially to eliminate those differences, or find ways to make them redundant.

The Canada-EU Business Roundtable (CERT), a business lobby providing much of the support and input on priorities for the free trade negotiations, suggests a policy of mutual recognition of standards. That doesn't mean Canada will follow Europe in areas such as the regulation of toxic chemicals, where the EU has developed a much stronger system than in North America. It means that European jurisdictions may be asked to turn a blind eye to weaker Canadian regulations and vice versa. Mutual recognition is preferred by business groups because it means that weaker standards in one jurisdiction cannot be used to justify blocking products from entering markets in the other jurisdiction.

It is also crucial to remember that under NAFTA's Most Favoured Nation clause, Canada is not allowed to offer European or other foreign companies more investor rights than currently enjoyed by Mexican and American companies. The CETA will go further than NAFTA by liberalizing services and local procurement. One result would be to give more trade options to American private health providers and insurers who want to challenge Canada's public health care system.

There's money in Canada's public services

While Canadian companies, including large agriculture and financial players, are looking for better access to the European market, EU negotiators are clearly after Canadian services contracts, including public services. Their demands are identical to what they have been asking of Canada at international negotiating venues such as the World Trade Organization (WTO) and General Agreement on Trade in Services (GATS) – that Canadian jurisdictions privatize government services and let European companies buy them up.

In 2002, international trade expert Ellen Gould listed the European Commission's GATS demands as follows: "It is telling Canadians that the management of their pension funds should be opened up to private firms. It is telling the people of Saskatchewan, Quebec, and British Columbia they should surrender auto insurance services to foreign companies... People in all provinces with public monopolies on alcohol sales are being told these should be eliminated."

Any agreement with Europe is likely to put pressure on provincial governments to increase privatization, including in areas such as child care and public health care. The 2009 scoping exercise recommended that, "the services provisions of any agreement should apply to measures taken by all levels of government, as well as non-governmental bodies, in the exercise of powers delegated by any level of government," and that, "No mode of supply or services sector should be excluded..." Note the emphasis on all levels of government: municipal governments will also be forced to fall into line with an international trade agreement that is signed without their involvement.

Europe thirsty for Canada's water

Europe's largest and most notorious private service providers are its major water companies, including Veolia and Suez, both of which signed a joint business "Declaration in Support of a Canada-EU Trade and Investment Agreement." According to a Corporate Europe Observatory (CEO) report from March 2009, "Judging from all available sources, the EU appears in fact to be pushing for including water in trade agreements whenever possible." CEO also leaked Europe's GATS demands in February 2003, proving that the European Commission was asking 72 countries to "liberalize" their water services and give unlimited market access and "national treatment" to foreign firms. "Many of the countries targeted had public-managed water sectors," wrote CEO. "The EU's demands were clearly aimed at advancing privatization to benefit the EU corporations that dominate the world's private water markets."

Where "Buy Local" and ethical purchasing fits in

The European Union has wanted assurances that differences in provincial regulations, as well as any freedom to discriminate in favour of local or national companies when spending public money, would be eliminated in the course of negotiations. The joint Canada-EU Scoping Group was of the opinion that "any agreement should substantially improve access to public procurement markets aiming to achieve full coverage of central and sub-central government procurement in all sectors, to ensure inter alia treatment no less favourable than that accorded to locally-established suppliers."

Any conditions provinces or municipalities can now put on public spending, such as local content rules, environmental or ethical sourcing, or requirements to hire locally will be discouraged and potentially illegal under the new deal with Europe. This is why Canadian premiers – though notably not the provincial governments – have been asked to participate in the negotiations. It is because their powers, and the powers of sub-provincial entities, such as regional municipalities, cities, school boards, health authorities, universities, etc., will be substantially altered or curbed. Spending public money on local or provincial priorities may soon come to an end.

What you can do

We must put pressure on our municipal, regional and provincial elected representatives to reject any agreement with Europe that would curtail the right to keep important services, such as health care and water, in the public realm. Municipalities must be consulted on the Canada-EU agreement because they risk losing so much control over how public tax dollars are spent in their communities. We must demand a say in international trade agreements that put a premium on no-questions-asked corporate profits at the expense of all other social goals, including local democracy itself.

Harper's Buy American proposal to President Obama

Weakening local democracy and curbing local solutions with little gain for Canada

There has been much concern and confusion in Canada around the Obama administration's proposed stimulus legislation, which contains a "Buy American" clause stating the following:

"None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States."

The law is a temporary measure aimed at boosting the U.S. national economy, which suffered a major blow when the U.S. banking and real estate markets collapsed last year, dragging the global economy into recession. It was a rational policy decision based on a fear that, without protection, America's manufacturing sector and other industries would be decimated. Already, more than ten million jobs have disappeared in North America since the economic crisis hit.

But, despite the magnitude of the crisis, which was caused by failed free-market economics, Prime Minister Harper has latched onto the "Buy American" controversy to further limit what provincial and municipal governments can do locally.

Decrying "Buy American" policies as protectionist, Prime Minister Harper and International Trade Minister Stockwell Day have proposed an ambitious new agreement with the United States that could bind provinces, states, territories, municipalities and cities to international trade rules prohibiting any conditions on local government procurement (i.e. spending public money on infrastructure, goods or services). The conditions could limit minimum local content rules for materials or services, ethical purchasing policies, commitments to hire from the community, and requirements that companies reinvest a portion of revenues or profits locally.

There is little, if any, evidence that further deregulating local and provincial economies in this way would benefit the companies that have been shut out of U.S. infrastructure contracts, or the Canadian cities and towns in which these companies operate. The federal proposal would unfairly and unreasonably restrict the powers of local governments to set economic and social policies that directly benefit their own communities at a time when they need that flexibility the most.

What's in the proposed Canada-U.S. agreement?

According to *Inside U.S. Trade*, a media source that researches and covers trade developments, the following items would be in the proposed Canada-U.S. agreement:

1. Canada would guarantee that U.S. firms have the same access as Canadian firms in bids on Canadian subnational (i.e. provincial, municipal and perhaps school board, university, health agency, etc.) public procurement bids. That equal access would end when funds currently being distributed by the Obama administration under the U.S. stimulus package expire.
2. There would be a list of subnational procurement that U.S. firms would not have guaranteed access to, including procurement that is "necessary to protect public morals, order or safety," which would include contracts involving prison labour and procurement contracts involving intellectual property protection. This is identical to NAFTA's procurement chapter exceptions.

3. The deal would include a dispute resolution process for U.S. firms claiming they have been unfairly excluded from subnational procurement in Canada. Presumably, this would be separate from NAFTA's Chapter 11 dispute process on investment.
4. In return for added, albeit temporary, access to Canadian subnational contracts, the Harper government wants the U.S. to grant a waiver to Canadian firms from the "Buy American" provisions in the \$787 billion U.S. stimulus package.
5. As a second phase to its proposal, the Harper government wants a commitment from the Obama administration "to explore the scope for **a permanent, reciprocal government procurement agreement.**"

President Obama has suggested that Canadian provincial governments could sign on to the World Trade Organization's Government Procurement Chapter, as 37 U.S. states have voluntarily done. This would have the same effect as a new bilateral agreement with the U.S. of banning a whole list of government conditions on goods and services contracts.

What you can do

A growing list of unions and civil society groups are asking the premiers not to endorse any agreement that would unreasonably restrict their democratic right and duty to spend public money on local economies and local job creation. This isn't about fighting U.S. protectionism; it is about choice and about democracy. The truth is that "Buy American" policies have existed in the United States for more than 75 years and most Americans are committed to keeping them in place. They are so popular because they provide U.S. states and municipalities the freedom to choose to spend public tax dollars locally. That doesn't mean they purposely exclude Canadian companies. Often, it simply means that local governments buy locally, or from the American bidding company, even if it costs upwards of 15 per cent more than an out-of-country competitor – a practice that was once widespread in Canada.

While Prime Minister Harper refuses to renegotiate NAFTA to improve labour and environmental protections, he's willing to open up the agreement to bind municipalities and provinces to trade rules curbing their powers over local economies. Local procurement is not the problem. In fact, the power to decide what and where to buy from is one of the last vestiges of public control over how local communities develop and grow, and an important tool for improving and expanding their economies in a sustainable way.

The McGuinty government has lent its support to the Harper government plan without consulting Ontarians or Ontario municipal governments. Write to or call your local MPP and ask them to cancel Ontario's support for the bilateral procurement agreement until Ontarians have had a chance to debate its merits and dangers.

NAFTA's Chapter 11 investor-state dispute process

New challenges to Canadian environmental and health policy call NAFTA into question

When the North American Free Trade Agreement (NAFTA) was implemented in 1994, it introduced new corporate investment rights and protections unprecedented in scope and power. While there are many aspects of NAFTA that threaten social and environmental priorities, the investor-state dispute process found in Chapter 11 puts public policies aimed at protecting people and the environment at the most risk. Chapter 11 gives corporations the right to sue the Canadian government, often for tens of millions of dollars, if any public policy or government action denies them investment or profit opportunities.

There have been many Chapter 11 cases filed over the years. Most recently, in April 2009, American chemical company DowAgrosciences decided to sue the federal government for \$2 million in damages that the company claims it will suffer from Quebec's cosmetic pesticide law. Ecojustice Canada, Equiterre, the David Suzuki Foundation, the Environmental Law Clinic and the Canadian Environmental Law Association (CELA) have called upon the federal government to vigorously defend Quebec's ban on the herbicide 2,4-D, as a reasonable and lawful measure to protect human health.

According to the Canadian Centre for Policy Alternatives, about 40 per cent of legal challenges to government policy under NAFTA's Chapter 11 have been against environmental policies. And many of the cases have cost us millions of dollars.² Here are some more examples:

- The Canadian government paid Ethyl Corporation \$13 million in an out-of-court settlement based on a challenge, filed on April 14, 1997, to Canada's ban on the import and interprovincial trade of the gasoline additive MMT, a suspected neurotoxin.
- On July 22, 1998, U.S. waste disposal firm S.D. Myers Inc. challenged a temporary ban on exports of PCBs, which the federal government was arguably obliged to implement under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, according to trade lawyer Steven Shrybman in a recent presentation to Parliament's Standing Committee on International Trade. A NAFTA tribunal later ruled the ban violated Articles 1102 (National Treatment) and 1105 (Minimum Standards of Treatment) and awarded the company \$5 million plus interest in damages.
- On December 2, 1998, U.S. water firm Sun Belt Water Inc. challenged British Columbia's water protection legislation and voluntary ban on exports on the basis that they violated the same Articles above (1102 and 1105), as well as Article 1110 on Expropriation. The Canadian government says the claim is invalid, but the company, which asked for \$10.5 million, insists it is still active.
- On October 12, 2006, U.S. investor V.G. Gallo, challenged the Ontario government's decision to kill a joint project to put a major new dump for Toronto's garbage on top of an abandoned, flooded mine in northern Ontario. The environmental risks were enormous and the public opposition was overwhelming. Yet the company wants more than \$355 million in expropriation costs. The case is ongoing.
- U.S. company Bilcon, proponent of the White Point Quarry project in Digby Neck, Nova Scotia, wants \$188 million because an environmental assessment put an end to the project.

² Examples taken from the Canadian Centre for Policy Alternatives (http://www.policyalternatives.ca/documents/National_Office_Pubs/2008/NAFTA_Dispute_Table.pdf) with the exception of the Bilcon and private health clinic challenges, which came after the CCPA publication in 2008.

- U.S. investor Centurion Health would like \$160 million because of the difficulties it has faced in trying to establish for-profit health services in British Columbia. “Canada is an unfair competitor in ways detrimental to U.S. private sector companies in the monopolized health care system in Canada,” states Centurion’s revised NAFTA Chapter 11 claim. “The competitive activities of Canada’s private sector health care providers, based as they are on the foundation of a public monopoly and the network it has built with public funds, are incompatible with basic principles of fairness in regards to NAFTA and GATT (the General Agreement on Tariffs and Trade),” the company adds.
- U.S. pulp and paper company AbitibiBowater has filed a Chapter 11 case demanding \$300 million for Newfoundland’s expropriation of water rights granted more than 100 years ago to help run their mill, which the company will be closing anyway.

In the health care challenge, Centurion is correct that current free trade agreements, and those now being negotiated, make it very difficult to strengthen public services after they have become partially privatized. The Chapter 11 dispute process also puts a chill on legitimate public policy. Just the threat of an expensive NAFTA Chapter 11 challenge is enough to discourage federal and provincial governments from pursuing environmental or health policies that might run counter to business interests. Think how much time and money is spent defending these legitimate policies.

The federal government is bound by law to defend Quebec’s pesticide law, public health care, Nova Scotia’s environmental assessment process, and Newfoundland’s appropriation of AbitibiBowater’s water and energy rights. But, wouldn’t a more appropriate response be for Canada to signal its desire to renegotiate NAFTA to remove or amend the Chapter 11 clause that allows companies to dismantle environmental and public health protections on the grounds they interfere with profits?

What you can do

Ontarians, and all Canadians, need to demand from their elected representatives at all levels the courage to forge strong environmental and public health standards and policies regardless of the potential for Chapter 11 challenges under NAFTA. Where NAFTA unreasonably gets in the way of protecting the environment, it is the Canadian government’s responsibility to scrap Chapter 11 and refuse to pander to business interests that run counter to the public interest. Write to your MP, call their constituency office, and tell them that you want them to support local communities and not international corporations, and scrap Chapter 11 from NAFTA and any future agreements.

Ways Forward

Making progressive procurement work for your community

Trade agreements must not get in the way of good public policy

As we've seen, many local development initiatives ("buy local" or official ethical purchasing policies) run the risk of contravening new and existing internal and international trade agreements, even if these important initiatives have little to do with trade as most people understand it. There are times when good public policy doesn't even make it to a vote because someone inside City Hall raises trade agreement alarm bells, whether they are justified or not!

That is why it is important that our local councillors, as well as farmers, environmental groups and all Ontarians recognize where trade agreements might have an impact – and then continue to push for the local policies they want.

In Toronto they have done exactly that.

In October 2008, Toronto City Council adopted a Local Food Procurement Policy aimed at reducing greenhouse gas and smog causing emissions generated by food imports from outside Ontario. The local food initiative, which was part of the city's broader Change, Clean Air and Sustainable Energy Action Plan, committed Toronto to progressively increase the percentage of food being served at city-owned facilities or purchased for city operations from local sources.

The City of Toronto recognized the potential for trade challenges under various agreements, but decided to pursue the local food initiative anyway.

"Establishing a local food procurement policy does have implications for interprovincial trade issues and the policy could be interpreted as discriminatory in relation to the Agreement on Internal Trade, the Discriminatory Business Practices Act, and the Competition Act," wrote Toronto city staff in May 2008.

"This policy is being developed and recommended for environmental and health reasons and the goal is to reduce the greenhouse gas and smog causing emissions associated with the food transportation and production processes. The policy is not being put in place to reduce competition. The potential for a challenge does exist, but the City should be able, as it did with the Pesticide Bylaw, to show that it has the right to adopt a policy of this type because of the environmental and health issues of concern."

What you can do

There are many ways to support good trade initiatives in your community. Here are some ideas:

1. Build an awareness of internal and international trade campaigns into local battles for ethical, sustainable or "buy local" purchasing policies in your community, whether at the city, school board, hospital, or your local farmers market.
2. Form a local government-public trade committee that can discuss trade issues, and hold councillors to account when they get cold feet on a progressive procurement initiative. Through this committee, you can help build a broader community awareness of the impacts international deals have on local politics.
3. Demand that trade agreements change, instead of handcuffing, communities by limiting how local governments address climate change, the economy, and job creation.

Holding our provinces accountable on trade

U.S. states are passing trade bills that force a vote on all new agreements

There is a growing movement of U.S. state legislatures demanding a greater say in international trade agreements that affect state and municipal policy. This September, the California Senate and Assembly voted 23 to 13 and 50 to 29, respectively, in favour of a bill that would uphold the state's jurisdiction over non-trade issues.

“Assembly Bill 1276 recognizes that the state's decision to commit state procurement, services and investment laws to the terms of trade agreements falls under the jurisdiction of the state legislature,” explains Sarah Edelman, a trade expert with Public Citizen in the United States.

“Currently, the federal government consults only with the governor's office which has exercised full decision-making power over state commitments to trade pacts. AB 1276 brings these decisions out of the back room and into a forum where they can be fully vetted and assessed to determine whether or not new commitments will benefit the state.”

Prime Minister Harper has asked Canada's premiers to help negotiate new trade talks with the Obama administration and European Union because the provinces are being asked to give up a lot of their traditional powers and areas of jurisdiction. But premiers should not have the authority to agree, on behalf of millions of voters, to be bound by these international pacts that have less and less to do with real trade, and more with curbing democratic governance of the economy.

“California, perhaps more than any other state, understands that NAFTA-style trade agreements are certainly about more than simply trading goods and services,” says Edelman. “Unfortunately, Californians have learned this after spending way too many tax dollars warding off corporate claims, totaling nearly \$1 billion, against NAFTA challenges of state environmental and public interest regulations, including a state ban on gasoline additive MTBE and mining regulations.”

What you can do

Our politicians should be accountable to the voters that elected them and disclose information on trade deals that impact locally. Here are some ways to make that happen:

1. Demand that our premiers and their trade officials bring our legislative representatives and the Ontario public up-to-speed on internal and international trade agreements that threaten provincial and local democracy.
2. Ask that our Members of Provincial Parliament champion a trade bill, similar to California's proposed law, establishing a democratic process for deciding whether or not to commit the province to these internal and international trade regimes.
3. Demand that Premier McGuinty freeze the current Ontario-Quebec Trade and Cooperation Agreement, and cease participating in negotiations with the European Union, until Ontarians have had a chance to see what's on the table, where we'll lose, and decide whether or not to commit the province to these new deals.

The U.S. Trade Reform, Accountability, Development and Employment Act of 2009

A blueprint for trade policy reform and fair trade in Canada?

Members of Congress and Senators in the U.S. have worked with an array of labour, environmental, consumer, faith and family-farm organizations to develop the U.S. Trade, Reform, Accountability, Development and Employment (TRADE) Act that offers a progressive path to a new trade and globalization policy.

The TRADE Act requires a review of existing trade agreements, including NAFTA and the WTO, and outlines what must, and must not, be included in future agreements. It also provides for the renegotiation of NAFTA and describes a new process for negotiating new agreements that would enhance the role of elected officials. The greatest concern from TRADE Act supporters is that current “free trade” deals don’t do enough to protect jobs and the environment – and they do too much to protect corporate profits.

But, it’s also about accountability, as the act’s title implies. In Canada, trade agreements are negotiated in secret by government bureaucrats and trade lawyers, and then signed by the Prime Minister. The agreements are then brought to Parliament for a minimal legislative debate where they are rarely given the attention needed.

The U.S. TRADE Act would establish a committee comprised of members of all congressional committees to review the renegotiation plan – before the ink is dry. Already, the act has 117 co-sponsors in the U.S. government and that number continues to rise.

What you can do

Could this be an idea whose time has come for Canada? Let your Member of Parliament know you want to see a Canadian TRADE Act that would require a renegotiation of NAFTA to strengthen environmental and job protections, and a fairer and more accountable internal and international trade policy in this country.

For more information on the U.S. TRADE Act, see the Public Citizen website at www.citizen.org.

How communities are doing it better

Many Ontario municipalities have completed or are working on policies, practices, motions and resolutions on topics ranging from bans on the use of sweatshop labour, to resolutions on local procurement, to fair wage and environmental sustainability policies. These are examples of good public initiatives that may be adversely affected by the passing of various interprovincial and international trade agreements. Other public institutions, such as agencies, school boards and universities, may also be affected by secretive trade negotiations.

Here are some highlights:

Ottawa

The City of Ottawa's ethical purchasing policy came into effect in May 2007. In part, the Ethical Purchasing Policy document states, "The City of Ottawa is committed to being a force for positive social change by purchasing goods and services from responsible producers that supply quality products at competitive prices and abide by ethical standards and norms." The policy also includes a Supplier Code of Conduct that imposes minimal standards for hours of work, wages and compensation.

Kitchener

On June 23, 2008, Kitchener City Council approved a staff recommendation that the city stop the serving of bottled water at its general committee, Council or any other committee or public meetings at city hall. In April 2008, the Region of Waterloo banned the sale of bottled water on its premises and stopped using bottled water at regional functions.

Toronto

Toronto has perhaps the most comprehensive set of regulations on these issues. The city's Fair Wage Policy has as a central principle involving the prohibition of the city doing business with contractors, sub-contractors and suppliers who discriminate against their workers. Originally implemented in 1893 to ensure that contractors for the city paid their workers the union rates or, for non-union workers, the prevailing wages and benefits in their field, the fair wage policy has expanded over the years to other non-construction classifications, such as clerical workers.

In October 2002, council approved a purchasing policy that will require the city to buy its uniforms and other apparel items from "no sweat manufacturers" that respect the rights of their workers regarding working conditions and pay.

In April 2006, council adopted a motion encouraging the operators of all Toronto municipal facilities to distribute City of Toronto tap water rather than commercially-bottled water.

And, in October 2008, Council adopted their Local Food Procurement Policy aimed at reducing greenhouse gas and smog from emissions generated by food imports from outside Ontario as part of the implementation of Climate Change, Clean Air and Sustainable Energy Action Plan. Other institutions in Toronto are following suit, including the University of Toronto, which has committed to using locally sourced, environmentally and socially responsible food on its campus.

Sudbury

The City of Greater Sudbury Council, in addressing the impact of manufacturing job losses in the Greater Sudbury Region, has adopted a comprehensive and integrated set of economic, fiscal and monetary policies – a framework for fair trade that will both strengthen domestic manufacturing and protect manufacturing jobs, including "A Made in Canada" government procurement policy.

Windsor

In February 2003, Windsor City Council authorized their staff to work with interested parties to outline possible amendments to the city's purchasing policy to ensure that the city does not contract with sweatshops in the procurement of apparel and textile goods and services.

Kingston

The City of Kingston is in the process of banning the sale of bottled water on its premises. The Algonquin and Lakeshore Catholic District School Board in Kingston has already moved to implement such a ban, noting that "access to potable water is a human right" that is increasingly threatened by a number of practices and that the disposal of plastics "raises serious environmental concerns."

London

London has ratified a bottled water ban. For the purposes of public education, every web page where tourists go for information, people are advised: "To reduce the amount of plastic going into recycling, bottled water is no longer being sold at any facility run by the City of London."

Hamilton

The City of Hamilton adopted strict purchasing guidelines in May 2007 that require suppliers to "represent and certify" in part that "all goods or products supplied under this quotation/proposal/tender have not been manufactured, assembled or produced, either wholly or in part, in a sweatshop, as defined in the City of Hamilton's Purchasing Policy or by child labour."

On all construction contracts with the City of Hamilton, the guideline states that, "every contractor and sub-contractor shall pay or provide Wages and Benefits to their Employees, in accordance with the Fair Wage Policy and the Fair Wage Schedule with the City." In addition, if someone feels a contractor or sub-contractor isn't providing a fair wage, the municipality has a transparent complaint form process.

Conclusion

Trade agreements affect all of us. Municipal, provincial and federal governments must be innovative and responsive to the communities they represent, as well as the international community we are all part of. We need governments to recognize, like so many people already do, that many of the solutions to the economic, environmental and energy crises we face, are going to be local solutions.

Trade agreements that restrict what municipalities and provinces can do to protect the environment, save existing jobs and create new ones, strengthen public services, and support local economies, are not in the public interest.

By taking action in our communities, we can all ensure a better and fairer trade future for Ontarians and for our country.

Stand up for Fair Trade!

Get Your Representatives to Make the Fair Trade and Progressive Procurement Pledge

It's time Ontarians knew they could count on their elected representatives, locally, provincially and federally, to stand up for fair trade and local democracy – both of which are threatened by current and emerging internal and international trade agreements.

Take the following pledge to your local councillor, school board trustee, Member of Provincial Parliament or Federal Member of Parliament and ask them to sign it. Let us know when they do so we can highlight it on our website and show Canadians where their politicians stand on trade!

Trade Pledge

Trade and economic policy is only useful to the extent that it keeps people working and enriches communities in an environmentally and socially sustainable way.

Traditional “free” trade agreements have prioritized stable investment regimes for multinational corporations, but often at the expense of jobs, public services and the environment.

These trade and investment agreements, including recent interprovincial agreements in Canada, have been developed and negotiated with little, if any, public input.

As an elected representative of my community, I commit to:

- Promote a fair and balanced approach to trade and economic policy.
- Pursue strong environmental, public health, job creation and other local development policies without fear they may contravene existing or future trade and investment agreements.
- Vigorously debate and, if necessary challenge, the negotiation or approval of new trade agreements that threaten democratic governance.
- Renegotiate, where necessary, any interprovincial or international trade and investment agreement that is found to put unreasonable and socially damaging restraints on the exercise of local, provincial or federal democracy.
- Oppose the expansion of NAFTA, or the ratification of new trade agreement with the European Union, that would bind subnational governments to NAFTA-like restrictions on procurement, environmental, and economic development strategies and policies.

Signed: _____ Date: _____

Say bye to buy local

**Want more information about fair trade?
Get in touch with us today!**

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