

Many Loose Ends in Canada-EU Trade Deal

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Opposition to the “comprehensive” trade deal keeps eyes on investment protection, public services, local procurement, and intellectual property.

Formal negotiations on a proposed Canada-EU free-trade agreement are now over. With the end of a ninth round of talks in Ottawa this past October, provincial, territorial, and EU member-state governments have been cut out of the picture (temporarily) so federal and European Commission officials can tie up loose ends in trouble areas. The Harper government claims an agreement with the EU is still possible for early 2012, but European legislators have been told the summer is more likely. There are technical and political reasons for the delay. The eurozone crisis is likely not one of them, however, and may actually increase the resolve of otherwise blasé EU member states to seal this deal with Canada.

A growing list of Canadian and European labour and environmental groups, emboldened by the anti-austerity and Occupy movements, want the trade talks halted immediately. They see CETA as a corporate rights deal for the one per cent. As long as trade and investment flows are the priority, climate change, jobs, and equality are not. Finally, there is the deal itself, which may stall on its own in key areas such as supply management, intellectual property, rules of origin, investment protection, and even the definition of public

services.

CETA STATUS UPDATE

We can only know as much as our government tells us about CETA. Civil-society groups, including non-governmental organizations and academics, are briefed after each negotiating round. Occasionally, we receive a leaked text from one side or the other, but officials pretend these don't exist.

During the past two negotiating rounds, Conservative Trade Minister Ed Fast has made public announcements about their progress. But during his October press conference, journalists were told that many details were for “[deep background](#)” only, and therefore unprintable.

Canada says the negotiations are progressing well, while the EU says there are still lots of problems. One of them, according to the commission, is the issue of supply-management boards for poultry, eggs, and dairy. Another on the EU side is pork and beef access for Canadian producers, who are insistent that CETA is not worth signing without significant gains for grains or animal products kept out of Europe for regulatory reasons (i.e. because they contain hormones or genetically modified content).

Of the problem areas, intellectual property will be handled last, as the EU continues to push Canada on copyright and patent terms on pharmaceuticals. EU negotiators are watching the passage of Canada's copyright bill and resisting Canadian requests for broad cultural exemption (as exists in NAFTA and all other Canadian free-trade agreements). They want automatic patent term restoration if

more than five years have passed between patenting and market authorization, as well as other extended monopoly rights for Big Pharma that will restrain Canada's productive, jobs- and research-heavy generics sector.

Prime Minister Stephen Harper is fighting both artists and internet-freedom constituencies on his copyright bill. He won't want a double battle on pharmaceutical policy, but he's going to get it in CETA and it will expend political capital.

DEFINING PUBLIC SERVICES

It was difficult to decipher, in the October briefing, what Canada will cover in areas related to water. We were assured that, in general, there is a common interest in protecting public services – but clarity in the language will be important.

Neither Canada nor the EU simply excludes all public services from trade agreements. In CETA, Canadian negotiators have proposed broad so-called horizontal carve-outs commensurable with their NAFTA and GATS reservations, according to EU sources. These protections are not perfect, and apply only to those services provided by a public body on a non-commercial basis. The EU carve-out is similar, but refers to “services of general economic interest.” CETA may use the EU language.

In either case, since CETA will likely include strong investor protections that exist in NAFTA and many EU member state bilateral investment treaties, the lack of a clear definition for public services is very worrying. It creates ripe conditions for compensatory claims by private service providers in the event that local or regional

governments reverse privatizations, or when newly created public services hurt the profits of existing private providers.

The problem this raises was the topic of a day-long [conference](#) in Brussels last week (“Canada-EU Trade Agreement: A Trojan Horse Against Public Services”), which was co-organized by the European Federation of Public Service Unions, the Austrian Trade Union Federation office in Brussels, and the Austrian Federal Chamber of Labour. Following academic presentations on the issue from European and Canadian presenters, parliamentarian Jörg Leichtfried of the International Trade Committee and EU-Canada delegation said, “some of us in the European Parliament are very concerned about the lack of transparency of these [CETA] negotiations and we do not believe that the European Commission should keep pushing this neoliberal agenda.” Leichtfried told the audience he would not support a deal with Canada if it in any way endangered public services. It may not be enough on its own to stop CETA, but lack of clarity on the definition of public services will be an important debate internally for a Parliament that is seeing its will ignored in other areas, notably investment.

DEFENDING INVESTOR RIGHTS

Since the Treaty of Lisbon of 2009, the European Commission has had sole competence over investment policy, including the negotiation of investor protections and dispute processes in trade agreements. But EU member states have signed hundreds of bilateral investment treaties with each other and third-party countries. Despite attempts to sort out this contradiction, a uniform EU-wide investment-protection regime that can satisfy all players has yet to be

developed.

In the end, the commission ignored calls for moderation, transparency, and an end to the right of investors to directly challenge government policy in front of secretive arbitration panels at the International Centre for Settlement of Investment Disputes, the United Nations Commission on International Trade Law, the International Chamber of Commerce, and elsewhere. It ignored its own better judgement in an earlier position calling for greater transparency, some room for appealing the decisions of these pseudo-courts, the involvement of third-party testimony, and a pre-set roster of arbitrators to try to weed out possible corruption.

The commission opted, instead, to satisfy Germany, Holland, and other member states offering some of the greatest protections in the world to private companies against government rules, regulations, or legislation that might hurt profits now or in the future.

This leaves CETA in an interesting position. Effectively, the European Commission won't be able to stray from its mandate, which calls for unqualified Most Favoured Nation and National Treatment protections for EU firms in Canada, and vice versa. Canada's negotiators, on the other hand, have told us they've been trying to develop a new model investment protection pact with the EU that would try to "weed out the frivolous cases," which would be impossible under the EU mandate.

It would be nice to think that, with Canada's overwhelmingly negative experience under investor-state disputes – we've spent over \$150 million in lost cases or settlements, and who knows how many

more millions of dollars in legal fees – the Conservatives would not accept the EU position. But that is probably just wishful thinking. Harper wants this deal, and will pay a hefty price for it. The EU Parliament, on the other hand, may still cause some trouble for the negotiators, with investment becoming a surprise sleeper issue in CETA.

ONGOING ISSUES AND RESISTANCE

The friction when it comes to investment, agriculture, intellectual property, and how to cover public services, water, and power utilities is not debilitating. On their own, none of these issues would be enough to defeat CETA in the EU Parliament. But combined with ongoing irritants such as Canada's incensed lobbying against EU climate policy, its World Trade Organization challenge to Europe's ban on seal products, the visas Harper imposed on Czech travellers, and Quebec's continued support for its vilified asbestos sector, there's enough to delay the negotiations well into 2012.

That's not good enough for the more than 80 European and Canadian organizations that signed a declaration in October demanding an immediate end to the negotiations. They know that at the end of the day, in Canada at least, what goes and stays in CETA comes down to a political decision by an ideological, pro-market Conservative majority government. Minister Fast has said Harper won't sign a deal that's not in Canada's interests, but Harper's record says otherwise. Debate has been cut short or dispensed with altogether on some issues. For wheat farmers, debate and a plebiscite were ignored so that the Conservatives could fulfill a useless (for farmers, not [Cargill](#)) election promise to dismantle the Canadian

Wheat Board.

For its part, the Council of Canadians continues to call for the EU and Canadian offers to be made public and then debated publicly at whatever level of government will be affected, including municipalities. We're encouraging local governments to demand to be excluded from CETA's procurement chapter, and almost weekly another one does. Our chapters, along with other Trade Justice Network member organizations, are joining Occupy movements across Canada to denounce what we all see as a deal to put more limits on democratic options at home rather than open trade doors abroad.

It's not up to Harper to decide whether a deal with Europe is in Canada's interests or not. We must all have that discussion, based on all the facts, and make up our own minds.