

CETA: the toxic EU-Canada trade deal



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CETA is a major new deal that is currently being finalised between the EU and Canada. It stands for the Comprehensive Economic and Trade Agreement, and it represents one of the ‘new generation’ of trade treaties on behalf of big business that are set to undermine our democracy and destroy our basic rights.

Worst of all, CETA is a dry run for TTIP, the horrific EU-US deal that has fired anger and opposition across Europe. If CETA passes, its ‘corporate court’ mechanism means US corporations – the majority of which have offices in Canada – will be able to sue our governments for lost profits in a private justice system.

Neither Brexit nor a change in our government would make us safe from CETA – any investments made between CETA’s ratification and our departure from the EU could be ‘protected’ under corporate court processes from three to 20 years after we exit the EU.

Just like its ‘evil twin’ TTIP, CETA is by and for big business: the deal is about handing over control of our regulations, public services and legal systems to corporations. If you’re concerned about TTIP, you need to be concerned about CETA too. We can and must stop this toxic trade deal.

CETA's corporate court mechanism means the governments of Europe will be sued for any policies that impact the profits of big business. Most US corporations already have offices in Canada.

CETA is a grave threat to maintaining our public services. In a huge victory for big business, it's the first ever EU trade deal to use a 'negative list' approach – this means any and all public services are opened up for privatisation unless a government specifically chooses to exempt them.

CETA also places our regulations in peril – under CETA, big business will get an "early warning" of any potential health, social or environmental regulations specifically so they can be challenged before they see the light of day.

Five years of secrecy

With so much control over our democracy and rights up for grabs, it's no wonder that negotiations for CETA – just like all new generation trade deals – were kept behind closed doors.

CETA talks started back in 2009, and concluded with a ceremony in Ottawa in September 2014. Throughout the process, the Canadian government and European Commission made sure that no one could gain access to the treaty's legally binding text.

No MPs or MEPs were allowed to take part in the talks, and no one was granted access to the agreement until it was too late. A number of EU governments were unhappy with the final text agreed by the negotiators, but it was rushed through regardless. The huge and very complex text of the treaty has now been made public and can be accessed online – but it's too late to make any changes.

'Game over for the climate'

The CETA deal has been used as a lever to help ensure that highly polluting tar sands oil enters Europe. CETA has been used to attack the EU's Fuel Quality Directive, established in 2009 to stop dirty fuels entering Europe to meet our climate change commitments. Research suggests that tar sands extraction and refining leads to 23% higher greenhouse gas emissions than average EU fossil fuels.¹

Canada is the centre of tar sands oil production. Its mining has decimated the rights of First Nations communities, destroyed ancient forests, diverted huge amounts of water and led to toxic pollution.² From

2013 to 2015 the Canadian government spent \$30 million on lobbying the EU in order to ensure tar sands oil would not be banned from Europe.³ It was secretly supported in this aim by the UK government, itself working on behalf of BP and Shell.⁴

As a result, the Fuel Quality Directive has now been weakened and the 'flood gates' have opened for tar sands to enter Europe.⁵

Under CETA's dirty oil agenda, we can never achieve climate justice. In the words of renowned NASA climate scientist Prof James Hansen, if tar sands oil is exploited as projected it will be "game over for the climate".⁶

The people of Europe have already said 'NO!' to CETA

More than 3.4 million people across Europe have already rejected the CETA deal via signing a European Citizens' Initiative against TTIP and CETA. However, the undemocratic European Commission – which negotiates all of Europe's trade deals – has willfully ignored the demands of the people of Europe.



'Corporate courts'

CETA includes the dangerous 'investor-state dispute settlement' (ISDS) mechanism, which grants big business the power to sue our governments in a private justice system.

Due to the way in which CETA defines an 'investment', corporations will be able to sue governments for profits they haven't even made yet. This is how, when it had only spent \$2 billion on the project, company TransCanada launched a \$15 billion suit against the US government because Barack Obama halted a tar sands pipeline in the name of climate change.

Worse still, the European Commission has already asked European people whether they wanted the

controversial corporate court mechanism. In the biggest ever response to a European Commission consultation 97% of respondents said 'no'. The Commission's response was to rebrand ISDS, while keeping its core component of permitting only big business to sue governments when democratic policies impact profits.

However, in spite of the Commission's spin, institutions and academics around the world have seen through the cynical rebranding of ISDS:

The German Association of Judges, the largest grouping of judges and public prosecutors in the country, said it: "... sees neither a legal basis nor a need for such a court" and that "the creation of special courts for certain groups of litigants is the wrong way forward".

David Schneiderman, Professor of Law, University of Toronto: "So long as a broad set of rights are conferred upon foreign investors and their interpretation is left to a cadre of investment-law personnel, the regime will remain flawed. It certainly is not worth saving by way of a new investment court."

UN Independent Expert Alfred de Zayas, whose role is to promote 'democratic and equitable international order' says: "ISDS cannot be reformed. It must be abolished!"

Under CETA's corporate court mechanism, we can expect to see cases like this:

- **ISDS against clean energy transition:** Lone Pine Resources Inc is suing Canada for \$250 million for a ban on fracking – Lone Pine hadn't even done any fracking, but it's suing for the money it expected to make.⁷
- **ISDS against public services:** Slovakia was sued by Dutch health insurance company Achmea after it nationalised its healthcare system – an election promise. After refusing to pay, Slovak assets worth €29.5 million were seized by a Luxembourg court and handed over to Achmea.⁸
- **ISDS against human rights:** Argentina was sued by a group of water companies after it took action to ensure water was affordable for its citizens during a financial crisis – in line with its legal obligations under the human right to water. Despite this, Argentina was ordered to pay \$405 million to water companies in 2015.⁹

Public services under attack

A key element of CETA and all new generation trade deals is to open up our public services for privatisation and to prevent them from ever being re-nationalised.¹⁰

CETA takes this agenda to a new level: it is the first deal of its kind to use a process which means that all public services are open for privatisation unless specifically excluded – a "negative list".¹¹ The level of privatisation at the time the deal is signed also cannot be rolled-back – "standstill" and "ratchet" mechanisms. In the UK, where we have very few exclusively public services, we could not repeal the controversial 2012 Health and Social Care Act without facing a corporate court case and the potential payout of millions for the profits lost by private companies.

The European Commission claims that public services are exempted from CETA. However, the exemption it refers to applies only to wholly public services. With such an agenda, it is little wonder our trade unions are united in their opposition to CETA.

The UK Trades Union Congress (TUC) adopted a position of outright opposition to CETA in September 2014. The cynical re-branding of ISDS did not change this, as the TUC is: "... opposed in principle to foreign investors having a special court system to sue for compensation if they claim their rights have been violated – no equivalent exists for consumers, workers or domestic investors". The TUC's key concerns with CETA are around public services, ISDS, state sovereignty and labour standards.¹²

The European Trade Union Confederation (ETUC) and the Canadian Labour Congress (CLC: the Canadian equivalent of the TUC) are also opposed to CETA. In a joint statement they say: "Like all recent trade agreements, CETA still reduces the space for public policy, and constrains governments striving to provide services or regulate in the public interest."¹³

Deregulation

Under CETA, big business will be given the opportunity to challenge rules to protect society, health and the environment before they are even made. Worse still, CETA has been designed to ensure this process of empowering big business to undermine crucial regulations lasts indefinitely.

CETA's "Regulatory Cooperation Forum" will meet "at least annually" and consult "as appropriate, with stakeholders and interested parties", with consultations carried out by "any means" the EU or Canada believe to be appropriate.¹⁴ Such is the influence of corporate lobbies in Canada and the EU



that the likely outcome of this is that big business will dominate the Regulatory Cooperation Forum's meetings and will have both an "early warning" of and the chance to crush any new rules which may affect profits – regardless of their wider benefits.

In the negotiation of CETA and similar trade deals, and more generally, both Canada and the European Commission have shown themselves to be far more open to the wishes of corporate lobbies than trade unions, NGOs or other public interest groups. In the case of the European Commission, such is the influence of corporate lobbies that the term "reverse lobbying" has been used to highlight how the European Commission calls on big business to guide its policies rather than the other way around.¹⁵

How do we stop this dirty deal?

We can and must stop CETA.

CETA is going through its ratification process. CETA has been passed by the Council of the European Union and is due to be voted on in the European Parliament in December 2016. After this it faces votes in each of the 28 national parliaments of the EU Member States. However, the European Commission is against national parliaments having a vote.

War on Want will join allies in fighting this toxic trade deal at every step. Here's how you can help in stopping this dirty deal.

Take action against CETA!

1. Sign the European people's petition against TTIP and CETA
2. Order free materials on CETA from War on Want – spread the word!
3. Join more than 10,000 people who have called on the Prime Minister to guarantee MPs a vote on CETA
4. Contact your MPs and MEPs to tell them to reject this toxic trade deal
5. Join us on the streets to protest CETA and TTIP: sign up for our email updates so we can let you know all the latest information in our campaigns

- 1 'Two thirds of European oil refineries ready for tar sands imports', EurActiv, 25 November 2015
- 2 Indigenous Environmental Network, Canada
- 3 'Revealed: Canadian government spent millions on secret tar sands advocacy', *The Guardian*, 11 August 2015
- 4 'UK secretly helping Canada push its oil sands project', *The Guardian*, 27 November 2011
- 5 'Tar sands alarm as US crude exports to Europe rise', *The Guardian*, 8 December 2015
- 6 'Tar sands exploitation would mean game over for climate, warns leading scientist', *The Guardian*, 19 May 2013
- 7 'NAFTA challenge against fracking moratorium is 'fast-tracked'', Council of Canadians, 4 February 2015
- 8 'Slovak assets seized in dispute between state and Achmea', *The Slovak Spectator*, 24 May 2013
- 9 'Global Goals vs TTIP: Trading Human Rights for Profit', *New Internationalist*, 7 October 2015
- 10 For more information, see War on Want's report 'Public Services Under Attack: TTIP, CETA, and the secretive collusion between business lobbyists and trade negotiators'
- 11 'Negotiations on the EU-Canada Comprehensive Economic and Trade Agreement (CETA) concluded', European Parliament analysis
- 12 TUC CETA Briefing, August 2015
- 13 Joint statement on changes needed to CETA by the European Trade Union Confederation and the Canadian Labour Congress, 3 May 2015
- 14 Consolidated CETA text, pp. 177–179
- 15 'Caught in the act of reverse lobbying', Corporate Europe Observatory, 6 December 2010



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