

DON'T GAMBLE WITH PUBLIC POLICY



CETA and Investment: Removing environmental rules that restrict profits

One of the most controversial parts of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) in Canada and in the EU is the rights it will give multinational corporations to sue governments when public health, environmental or other policies interfere with profits.

The inclusion of an investor-to-state dispute settlement process in CETA is, in fact, one of Canada's only requests in the negotiations! There is no reason why two developed countries with strong legal systems should give extra rights to foreign corporations while curtailing what publicly elected governments can do to protect human health, water, ecosystems and the planet.

An investor-to-state dispute process allows foreign investors to bypass the legal system and bring disputes it has with government policy to unelected trade panels. These panels, made up of corporate lawyers for the most part, hold hearings behind closed doors in boardrooms in Washington, Geneva or London. Their decisions are binding, and they can result in multi-million dollar fines against governments. This process is not only unreasonably expensive, it fundamentally undermines public policy and puts environmental protection at risk. No similar powers exist in CETA or other trade deals to hold corporations to account when they hurt people or the environment.

A recent investment case against Canada helps



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explain what is at stake. In 2008, pulp and papermaker AbitibiBowater claimed the Newfoundland government had broken NAFTA rules by unfairly expropriating the company's assets, as well as timber and water rights. Under Canada's constitution, companies cannot own natural resources such as water, timber or oil. For better or worse they are the property of the provinces, to be managed as a public trust.

When Stephen Harper settled with AbitibiBowater last summer for \$130 million– the largest NAFTA settlement in Canada's history – he created a trade precedent that essentially privatizes Canada's water resources. National Treatment clauses in NAFTA and CETA could force our federal and provincial governments to recognize a "right to water" for other corporations that rely on our most precious resource to produce goods. Take the Alberta tar sands for example, which use at least three barrels of water to extract each barrel of bitumen. Efforts to reduce water use in tar sands production could lead to investment challenges under CETA by EU-based oil and gas firms increasing their presence in Canada. At the same time, Canada will be able to use these investment protections to sue the EU for its progressive climate or environmental policies that limit the Harper government's ambitions to make Canada an "energy superpower."

The investor-state dispute process is not just a threat to Canadian policy. It is used extensively by companies to challenge environmental decisions in the developing world. Canadian mining companies in particular push to include investment protections in trade agreements so they can bully Latin American, Asian and African countries into allowing them to extract oil, gas and minerals with as few restrictions as possible.



WHAT CAN WE DO?

Investment protections in trade agreements are unnecessary and dangerous. The Australian government recently acknowledged this in a newly released trade policy document that rejects investor-to-state disputes processes as posing too great a threat to public policy while offering no provable benefits to Australian firms operating abroad. We must demand that the provincial and federal governments in Canada take the same position. Our governments must not include an investor-to-state dispute settlement process in CETA. Then the government must remove it from existing agreements, including NAFTA.

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