

**Submission to the Committee on International Trade on Bill C-30, an Act to  
implement the Comprehensive Economic and Trade Agreement between  
Canada and the European Union and its Member States and to provide for  
certain other measures**

**Submitted by: The Council of Canadians**

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## **About the Council of Canadians**

Founded in 1985, the Council of Canadians is Canada's leading social action organization, mobilizing a network of 60 chapters across the country. Through our campaigns we advocate for clean water, fair trade, green energy, public health care, and a vibrant democracy. We educate and empower people to hold our governments and corporations accountable.

The Council of Canadians is part of a global movement working for social and environmental justice. We believe a better Canada and a fairer world are possible. Together, we turn that belief into action.

The Council of Canadians is a registered non-profit organization and does not accept money from corporations or governments. Our work is sustained by the volunteer energy and generous donations of our supporters.

The Council of Canadians was one of the first organizations to question and challenge the economic and social benefits of the Canada–European Union Comprehensive Economic and Trade Agreement (CETA). Council of Canadians' supporters continue to call for a study of CETA's impacts and a full public review, discussion and debate about CETA. We have been lobbying parliaments in the European Union and in Canada over the last few years.

## **Introduction**

CETA has been promoted as a “gold standard” progressive agreement between two parties – Europe and Canada – that have similar values and provide the potential for access to markets that are critical to their respective economies.

While it is true that both Canada and European Union member countries can broadly be regarded as liberal democracies with relatively high social and environmental standards and strong human rights protections, CETA itself does not fully reflect those standards. Sentiments about a trading partner or about European people in general are not the most important measures of a trade agreement's value – analysis is.

The Council of Canadians is concerned by the federal government's failure to conduct independent analysis of CETA, its failure to hold significant consultations, or to encourage quality public debate before entering into the agreement.

From the time the second version of the CETA text was released in 2015, Britain, the destination of [42 per cent](#) of Canada's exports to the EU, voted to leave the European Union. And yet there has still been no independent analysis of the agreement. Previously, during hearings by this committee, [Liberals asked](#) for analysis of both the costs and benefits of the deal, a tabling of analysis of CETA's impacts on pharmaceutical drug costs, and the “impact of the procurement elements contained in the CETA prior to any submission by the government of the agreement for ratification by Parliament.” None of these analyses have been completed.

There remain many reasons for concern about CETA's effects on the federal government's ability to legislate. There are also many concerns about CETA's impacts on farmers, fishers, municipalities, public services, drug prices, water and many other areas. For example, CETA's implementing legislation would immediately institute patent protections that could increase drug prices and would be hard to reverse.

Canada's implementation process has been in stark contrast to Europe's process. In the European Parliament various committees – economics, environment, employment, foreign affairs and transport – will provide input on CETA, and it is likely that the European Court of Justice will be examining the process, especially with regard to Belgium's endorsement, with binding effect.

Following a vote in the European Parliament, any member state can end its provisional application of CETA, but Canada – without an exit mechanism – would be stuck with it.

In Canada, CETA is being pushed through with no review and very little debate. The hastening of the process in Canada is not only less democratic, but also foolhardy. Key questions about impacts on the Canadian economy, democracy, and public services are being swept under the rug.

For that reason, we recommend that Parliament postpone ratification of Bill C-30 pending public consultation on CETA and economic analysis by the Parliamentary Budget Officer.

### **A progressive deal?**

Many people have called CETA a “progressive” trade agreement. However, it must be noted that it was negotiated by the previous Conservative government. In recent House of Commons debates, Conservative MPs have been quick to remind Canadians that CETA was the Conservative Party's creation. This is the same deal that lacks binding environmental and labour provisions and sets goals rather than provides enforceable rights.

Only three parts of CETA have changed since the deal was first negotiated: the added interpretative instrument, the EU country declarations, and the Investor Court provisions.

The first change is a series of statements on what the EU would like to see in the agreement in regards to investor-state provisions. It provides a wish list of rights the EU would like to see protected in the agreement, including the right to regulate, the precautionary principle, and labour and environmental issues. However, most legal scholars – and the European Parliament's own legal services – have noted that this instrument does not change what is already in the text, it merely interprets what is already there.

The Council of Canadians commissioned international trade lawyer Steven Shrybman of Goldblatt Partners LLP to analyze the [instrument](#). “There is little here to encourage the hope that a declaration by Canada and the [European Commission] (EC) will rise above simple rhetoric,” he writes. “A declaratory statement by Canada and the EC would not, and could not, amend the substantive provisions of the CETA text or otherwise exclude or modify the legal effect of the Agreement, and it is highly misleading of the Ministers to state or imply otherwise. Using terms such as 'legally binding', or suggesting that it is possible to make the investor-state regime 'absolutely watertight' does nothing to further inform public debate – quite the opposite, because it conveys a false understanding of the effect of an interpretative declaration on the settled text of an international treaty.”

The second change – the EU state declarations – are unilateral and non-binding, according to the European Parliament’s legal services.

### **Investment Court System**

The third area that has been changed is the “Investment Court System” (ICS) and it also leaves Canada vulnerable. ICS is another term for investor-state dispute settlement provisions, which give corporations the power to sue governments for legislation or policies that infringe on corporate profits. Under these provisions in NAFTA, Canada is the most sued country in the developed world, with 37 suits. Cases like Lone Pine Resources’ suit against Canada for \$300 million for Québec’s moratorium on fracking under the St. Lawrence River illustrate the danger. Two-thirds of the lawsuits involve environmental protections, according to the Canadian Centre for Policy Alternatives. This also creates a chilling effect on public policy, as Osgoode Hall Law Professor Gus Van Harten has illustrated in his [research](#). There is no [evidence](#) to show that ISDS has actually [encouraged investment](#). Many [countries](#) are seeking alternatives to the ISDS system.

But CETA does not offer a serious alternative, and ICS is likely to be defeated in Europe unless it is changed. Belgium will be challenging these provisions before the European Court of Justice, which could rule that they are not compliant with EU law. [Five regions in Belgium](#) have said they will not ratify CETA with the existing ICS provisions. A referendum is planned in the Netherlands.

While the ICS provisions under CETA differ somewhat from those under NAFTA, with a roster of 15 arbitrators chosen by government rather than by corporations, much has been written about how this system fails to resolve the fundamental issue of investors’ rights trampling other rights. Arbitrators’ conflicts of interest also have not changed. Ten independent UN experts and rapporteurs have argued that investors are protected, but states and the people they serve are not. It has been noted that these mechanisms allow investors to sue states, but not vice versa.

In the report *The Zombie ISDS*, Corporate Europe Observatory calls the proposed system a rebranding of the ISDS system.

The report states, “The dispute settlement process ... is not judicially independent but has a built-in pro-investor bias. Lawsuits would be decided by a tribunal of three for-profit arbitrators (now relabelled ‘judges’ by the EU) with vested interests. Unlike judges, they would not have a fixed salary but be paid per case – with a lucrative US\$3,000 per day on top of a monthly retainer fee of €2,000 per month so they would earn more fees as more foreign investor claims were brought.”

The report argues this system introduces the “right to regulate.” But as is also noted, this would not change the results of five arbitrations already underway using the old ISDS system. A joint study by the Canadian Centre for Policy Alternatives, Transnational Institute, Friends of the Earth Europe, Forum *Umwelt und Entwicklung* and Corporate Europe Observatory looked at case law and rulings and concluded that the Investor Court System would not change the results in five iconic cases. These cases include: Philip Morris vs. Uruguay for the introduction of graphic warnings on cigarette packages and other tobacco control measures to promote public health, TransCanada vs. U.S.A. for President Obama’s decision to reject the Keystone XL pipeline as part of a U.S. commitment to tackle climate change, Lone Pine vs. Canada for a precautionary fracking moratorium enacted in Quebec, Vattenfall vs. Germany for Hamburg city’s imposition of environmental standards for water use at a coal-fired power plant, and

Bilcon vs. Canada for an environmental impact assessment that prevented the construction of a large quarry and marine terminal in an ecologically sensitive coastal area.

In addition, the report notes that the ICS introduces new dangers such as leaving an investor's right to "legitimate expectations" undefined. This means an investor could make a claim based on a state's past actions. It could be argued that based on past statements or actions there was reason to expect that particular investments would not be affected by state policy decisions.

The investment court provisions are not within the scope of the implementing legislation, but in the Council of Canadians' view they should be excluded from the agreement completely.

### **Economic considerations**

Canada would lose 23,000 jobs between now and 2023 under CETA, according to an [independent study](#) by Pierre Kohler, an economist on leave from the United Nations, and Servaas Storm, Professor of Economics at Delft University of Technology.

The report also notes:

- **Public services are under attack.** Tax income will decrease by 0.12 per cent of GDP. Public spending will fall by 0.20 per cent of GDP. This is due to the increased competition for investors under CETA, with countries competing for investment by reducing corporate taxes.
- **Workers get less of the pie.** While productivity gains create higher profits, job creation and workers' incomes will stagnate. One of every two additional dollars that would have normally gone to workers will now go to owners and investors. This amounts to losses of \$2,656 per person over seven years, a far cry from government projections of a \$1,000 cheque per person per year
- **Canada's GDP would fall 0.12 per cent.** The study notes that many economists do not see a strong link between export growth and GDP growth.

The Harper government promised us \$1,000 more in our pockets and 80,000 new jobs. The figure of 80,000 jobs, it seems, was a mechanical calculation extrapolated from the results of the 2008 CETA pre-study, [based on stale 2004 figures that predate the 2008 economic crisis](#) that drastically affected Canada's manufacturing and export landscape. The study by Kohler and Strom slams other CETA studies commissioned by Canada and the EU for using flawed models based on neoclassical economic assumptions with a market liberalization bias. The Tufts study uses the United Nations Global Policy Model.

In fact, some prominent economists have argued that CETA is the wrong model for promoting equality. Recently, in [The Guardian](#) and [Le Monde](#), Thomas Piketty, professor of political science at the Paris School of Economics and author of the bestselling book *Capital in the Twenty-First Century*, says we should reject CETA, which belongs to a different age. He says, "The main lesson for Europe and the world is clear: as a matter of urgency, globalization must be fundamentally re-oriented. The main challenges of our times are the rise in inequality and global warming. We must therefore implement international treaties enabling us to respond to these challenges and to promote a model for fair and sustainable development."

In 2012, Liberal MPs said, “the government must clearly indicate not only the ‘benefits’ from the trade agreement being sought but also the ‘costs’ that could result from any agreement being sought and identify them by sector.” The Council of Canadians recommends an analysis by the Parliamentary Budget Officer.

### **Drug costs**

In CETA, and within the proposed implementing legislation, Canada will unilaterally adopt drug patent extensions, lengthening patents by two years to match European Union standards. These provisions, according to a York University study, will increase drug prices by up to [\\$1.65 billion](#) annually by delaying the arrival of generic drugs on the market. In a recent statement to the House of Commons Committee on Health, an assistant deputy minister of health admitted that “high prescription drug costs will [rise](#) under pending free trade agreements.” Already, [Canada](#) has the world’s second highest per-capita drug costs and the fastest-rising costs in the OECD. This would have policy implications, jeopardizing any potential national pharmacare program, and denying drug access to poor or unemployed Canadians.

In 2012, the Liberals on this committee recommended that the government “table an analysis with respect to the impact on pharmaceutical drug costs due to any implications arising from intellectual property changes.” This should be the case, now more than ever.

### **Municipalities**

More than [70 municipalities](#) have challenged provisions in CETA that disallow “buy local” programs, guaranteeing European firms access municipal and provincial contracts. The agreement provides “unconditional” access to sub-national procurement. This has effects on municipalities’ ability to promote “buy local” provisions or to set criteria for contracts that could be viewed as blocking market access. If CETA is ratified, this would be the first time we allowed a free trade agreement to include such provisions. While this is not in the implementing legislation itself, it is integral to the deal.

In 2012, Liberal MPs recommended that the committee “call for a full analysis be provided on the extent and impact of the procurement elements contained in the CETA prior to any submission by the government of the agreement for ratification by Parliament.”

### **Public services**

CETA represents a major attack on public services that are vital to Canadians’ wellbeing. Investor-state provisions are particularly dangerous because they affect Canada’s ability to regulate in favour of public services by allowing the threat of corporate lawsuits.

In CETA, public services are scheduled for liberalization. In Chapter 9, the trade in services chapter, once a public service is made private it cannot be made public again. This is known as the “ratchet effect.” It means that if a government decides that it wants put a service on the market it cannot bring it back in as a public service. It also means, due to the standstill clause, that it cannot create public services and exclude European corporations from these markets.

Some public services are protected from CETA’s provisions in annexes. However, this negative listing system, a first for a Canadian trade agreement, means that if a service is not listed in Annex 1 of the agreement it has to be open to liberalization. In other words, instead of protecting everything public and

then providing exemptions, everything is subject to market access to European corporations unless it is specifically protected in the agreement, thus casting a wider net.

For example, [four provinces](#) have put in exemptions for public auto insurance programs under CETA. These programs are intended to keep auto insurance affordable for consumers. The province provides insurance to all car owners, but excludes other insurers from parts of the market. However, if another province wanted later to create a public auto insurance program, this would not be allowed under CETA because it would have to keep that market open to European insurance companies.

Public services are not adequately protected under CETA. As already noted, while the interpretive declaration says failed privatizations can be reversed and public services regulated, the actual text, which says otherwise, cannot be undone.

## **Water**

Water, contrary to some assertions, is not adequately protected in CETA.

While CETA says that “water in its natural state (...) is not a good or a product,” it also states: “If a party permits the commercial use of a specific water source, it shall do so in a manner consistent with this agreement,” without defining “commercial use” or “water source.” As well, water is often commodified, not in its natural form, but as part of municipal services such as wastewater services or through virtual exports of water. The interpretative instrument, which contains language to protect water, cannot undo or add to the actual agreement.

This is important because [European companies](#), such as the large French firms Suez and Veolia, seek access to water services. CETA will give these water corporations rights to protect market access, and under investor-state provisions, the corporations can challenge restrictions that apply to Canada’s public water management systems.

As well, with public-private partnerships being part of the picture and municipalities having their funding tied to accepting private influence, CETA presents real dangers. Maude Barlow, National Chairperson of the Council of Canadians and a former special advisor to the UN on water, has written, “Cash-strapped municipalities can only access federal funds if they adopt a public-private partnership model, and several cities have recently put their water or wastewater services contracts up for private bids. If Suez or Veolia are successful in bidding for these contracts (and under the new deal, local governments cannot favour local bidders) and a future city council decides it wants to move back to a public system, as municipalities are doing all over the world, these corporations will be able to sue for huge compensation. Private water operators charge far higher rates than public operators and cut corners when it comes to source protection. Privatization of water services violates the essential principle that [Canada’s water is a public trust](#).”

In the text, Canada, unlike Europe, has not made exemptions for water at the [provincial level](#).

Agricultural trade also endangers Canadian water. Increased beef and pork quotas, rising exponentially from 50,002 and 80,549 tonnes respectively, will put a strain on water resources, amounting to virtual water exports. [Barlow](#) says, “Any increase in commodity exports to Europe will place a greater strain on groundwater in Canada, which is already a leading ‘virtual’ water exporter, sending massive amounts of

surface and groundwater out of the country in agricultural products. Our current net export of water in grains alone is totally unsustainable, equivalent to twice the Athabasca River's yearly discharge.”

With much of Canada’s water legislation weakened by the former Harper government, any attempts to bring this legislation back could be subject to investor-state mechanisms if it affects European investment.

### **Regulatory cooperation**

In the agreement, regulatory cooperation processes are outlined for harmonizing standards to allow for consultation early in the process before legislation or policy is considered. This forum can bring corporations and lobbyists into the process, giving them a say in regulations before Parliament has the right to look at them. This process puts public interest regulations – in areas such as health and the safety of food, drugs and chemicals – in jeopardy from private interests. Also, Chapter 12, the domestic regulation chapter of CETA, requires regulations to be “as simple as possible.” This is yet another avenue to challenge public interest legislation on issues such as transport, public safety, pipelines and chemicals.

### **Fossil fuels**

While the Paris climate change agreement seeks to limit carbon dioxide emissions levels to stop global warming at 1.5 to 2.0 degrees Celsius, many scientists have concluded that [80 per cent](#) of fossil fuels need to stay in the ground to achieve this. CETA does not distinguish between renewable energies and fossil fuels, including tar sands oil. It lacks provisions in its environment chapter to protect or promote renewable energy or to favour distinct goals in the agreement. But it does have provisions protecting investment in fossil fuels.

Several EU-based oil companies including Shell and Total already have major tar sands investments and would benefit from the proposed CETA investment rules. They could then challenge any changes to environmental legislation involving the tar sands. Many Indigenous communities are affected by tar sands and pipeline projects, and their ability to protect their communities and to set policy will be severely hampered. CETA’s investment provisions will clash with Canada’s constitutional commitments to obtain the free, prior and informed consent of Indigenous peoples and its obligations under the United Nations Declaration on the Rights of Indigenous Peoples.

Through CETA negotiations, Canada has successfully [lobbied](#) the European Union to weaken its Fuel Quality Directive, which would have labelled tar sands oil by carbon dioxide emissions. Analysis by [Transport and Environment](#) found that “there are no enforcement mechanisms that can bind the EU and Canada to uphold the already weak environment provisions in the CETA agreement, which requires approval by the European Parliament, national parliaments, and a final vote in Council before fully entering into force. Meanwhile, the deal’s regulatory cooperation section focuses on regulations having an effect on trade and not improving social and environmental policy, while such cooperation between Canada’s government and the EU is also subject to a tribunal system that is biased towards corporations.”

### **Fishing**

Newfoundland agreed to abandon its minimum requirements for fish processing to be done in the province in exchange for compensation that is yet to be determined. These requirements were part of



Canada's commitment to Newfoundland when it agreed to join Confederation and is an important source of local jobs.

### **Farming**

Under CETA, quotas for European cheese double, destabilizing Canadian milk producers and challenging Canada's supply management system. Canadian farmers will lose two per cent of their quota. The Dairy Producers of Canada estimates that this will result in losses of [\\$300 million a year](#) for the industry, with Canadian producers competing at a disadvantage against European producers that get [double the cheese](#) subsidies.

Ironically, two years ago, the European industry abandoned its [quota](#) system, sending it into crisis with market prices failing to match production prices. While the Harper government promised \$4.3 billion in compensation to dairy farmers under CETA and the Trans-Pacific Partnership, the Trudeau government has offered just a fraction of that amount, with \$250 million going to farmers for updates and \$100 million to processors.

As one [farmer calculated](#), "At current numbers, \$250 million works out to about \$21,500 per farm to 'update' operations per the program. Robotic milkers cost some \$250,000 each to install, and without any barn alterations. Automatic feed systems are equally expensive. There is no sign of farmers being reimbursed for the lost quota itself, many of whom will still be paying for it when CETA begins."

### **Shipping and cabotage rules**

Under CETA and the implementing legislation, EU companies of any flag will be able to move empty containers within Canadian waters. Previously, this was reserved for Canadian workers. This puts Canadian workers' jobs in competition with low-wage EU countries such as Cyprus.

### **Labour**

As with environmental standards, there are no enforceable labour rights within CETA. This hardly makes it a "progressive" agreement. Trade agreements in general have effects that result in greater inequality.

### **Conclusion**

Given the very grave concerns outlined in this submission, it is worrisome that Canada, with its new federal government, has not taken the time to analyze the arguments against CETA and consult Canadians about this deal. It is disappointing that to date, the committee has listened only to invited witnesses, most of whom have direct economic interests in CETA without necessarily representing the interests of most Canadians. This process needs to be opened up. The Trudeau government has said it would handle trade agreements differently from the secrecy shown by the former Harper government, but this has not yet been demonstrated.

The Trudeau government's claim that CETA is a "progressive" agreement is dubious. This was an agreement negotiated by Conservative politicians on both sides of the Atlantic. There has been little change since the Liberal government took over. This marks a missed opportunity to come up with a more ambitious agreement, with higher labour, environmental, democratic and financial standards.

Wallonia's concerns about CETA are not just the concerns of Walloons, but also of many Europeans and Canadians. More than 450 Canadian and European organizations have [signed a declaration](#) opposing CETA. Given that public concerns have not been fully addressed, ratification of CETA will continue to be difficult. As the deal heads to the European Parliament and to 38 other parliaments, it could be defeated. France and Germany vote in national elections next year, and opinion polls show that CETA is unpopular. A referendum on the deal is planned in the Netherlands, and five Belgian regions say they will vote against ICS during the ratification stage.

Canada should do its due diligence and analyze CETA properly. Rushing a bad deal would not be in Canadians' best interests.