



by **Scott Harris**



The Council of Canadians has used a giant Trojan horse to help raise awareness about the dangers of the Canada-European Union Comprehensive Economic and Trade Agreement.

Growing Opposition in Europe Could Still Derail CETA

If you believe Prime Minister Stephen Harper the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) is a done deal. That's the message the Conservative government has been repeating ad nauseam since Prime Minister Harper travelled to Brussels last October to announce that a "deal in principle" on CETA had been reached. Then came the announcement in August that negotiations had concluded.

But this doesn't mean the fight against CETA is over. In fact, it's just getting started.

With negotiations finished, the ratification process for CETA begins in both Canada and the EU. And while Prime Minister Harper may ultimately be able to use his majority to ram through ratification in Canada, the reality on the other side of the Atlantic makes a quick and smooth implementation of the deal in Europe much less certain.

European opposition

While some opposition to CETA has been simmering in Europe for years, it was the June 2013 launch of negotiations between the EU and the U.S. on the Transatlantic Trade and Investment Partnership (TTIP) that raised the stakes in Europe.

Widespread public concerns about TTIP, and especially the inclusion of the controversial investor-state dispute settlement (ISDS) process that

would allow U.S. corporations to challenge European policies and laws if they interfere with corporate profits, as well as chapters on regulatory harmonization, have fuelled opposition to similar elements in CETA. Many Europeans now see CETA as a dangerous Trojan horse for TTIP and a backdoor way for Canadian subsidiaries of U.S.-based corporations to challenge EU regulations or policies even if TTIP is defeated.

Suddenly, opposition to both TTIP and CETA is growing across Europe. Hundreds of thousands of European citizens have signed petitions opposing the inclusion of ISDS provisions in EU agreements. The European Commission, the executive body of the European Union that is responsible for negotiating CETA and other international agreements, was faced with such a public outcry that it was forced to pause negotiations on the ISDS in TTIP while it conducted a three-month public consultation. The consultation concluded in mid-July and received over 150,000 submissions from individuals and organizations, the most ever for an EU consultation process.

On July 15, close to 150 European organizations from 18 EU member states announced the launch of a European Citizens' Initiative (ECI) – a participatory element of the European Union that allows citizens to propose actions or legislation to the European Commission – to repeal the negotiating mandate for TTIP and to not conclude CETA. In order for it to succeed, more than one million signatures must be collected and country-specific quorums must be reached in at least seven EU member states. More information about the initiative can be found at www.stop-ttip.org.

The EU ratification process

With the text of CETA finalized the “legal scrubbing” process – which can take six or more months – is underway. The initialled agreement then needs to be translated into all 24 official languages of the EU. It then requires the approval of the Euro-

pean Council, which represents the EU member states. After that, it needs to be approved by a majority of the 751-member European Parliament.

To make matters even more complicated, CETA is considered a “mixed agreement,” meaning that it will also require the ratification by the 28 national parliaments that make up the EU. European Trade Commissioner Karel De Gucht has indicated that he may ask the European Court of Justice for clarification about whether or not CETA and TTIP require ratification of all 28 member states, a process that may further delay CETA approval.

Even if the whole process goes smoothly, the CETA ratification process will likely take years, and some in Europe don't expect a final ratification vote on CETA in the European Parliament before 2016.

Changing European politics

There are, however, strong indications that ratification won't go smoothly.

The May 2014 European Parliament elections saw significant gains for European parties – from both the left and the right – that are opposed to some of the most controversial elements of both CETA and TTIP. Representatives of a number of European political parties that are concerned about the trans-Atlantic trade deals now sit on the EU's Committee on International Trade (INTA), which was expanded by 10 seats to a total of 41 members after the election due to increased interest in the new trade deals. The new INTA Chair Bernd Lange has stated he will not vote in favour of TTIP if it includes ISDS, and Vice-Chair Yannick Jadot has gone so far as to call the negotiations “illegal” because members of the European Parliament have not been sufficiently informed during negotiations.

Jean-Claude Juncker, the newly elected President of the European Commission, has also expressed concerns about the inclusion of ISDS in European deals, stating that he will

not “accept that the jurisdiction of courts in the EU Member States is limited by special regimes for investor disputes. The rule of law and the principle of equality before the law must also apply in this context.” Juncker's comments stand in stark contrast to the pro-ISDS stance of the outgoing Commission president José Manuel Barroso.

At the national level, there is also increasing opposition to ISDS in a number of European countries, including France and, perhaps most notably, Germany. There, a controversial multi-billion-dollar investor challenge by Swedish energy company Vattenfall over Germany's accelerated phase-out of nuclear power following the Fukushima disaster has shifted public and political opinion against ISDS. Once a strong proponent of investor protection, the German Bundestag is now far less likely to support any deal that includes ISDS. Media reports in late July quoted officials stating that Germany may even refuse to sign CETA if it contains an ISDS clause.

Building a trans-Atlantic strategy

At the time *Canadian Perspectives* went to print, Canadians were still waiting to see the full agreement that the Harper government has kept under wraps for years. When we know the details, we'll be better able to push municipalities, the provinces and other impacted sectors in Canada to insist on a national public debate on CETA, and to oppose ratification of the deal.

But we'll also be continuing the fight in Europe. With European resistance to ISDS growing by the day, we'll continue to work with our European allies to ensure that European citizens and parliamentarians understand that the only way to *truly* stop destructive investor-state provisions in TTIP is to also keep them out of CETA. In the end, it may be enough to stop CETA in its tracks.

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