

# Executive summary

This collection of short reports describes and analyses many of the most contentious aspects of the proposed Canada–EU Comprehensive Economic and Trade Agreement (CETA). Dozens of trade and investment experts in Canada and the EU have collaborated to provide a diversity of perspectives on the proposed agreement, but all agree that CETA, as it is written, threatens the public good on both sides of the Atlantic. In a wide variety of policy areas only loosely related to trade, CETA elevates the rights of corporations and foreign investors above the welfare of citizens and the broader public interest.

## INVESTOR–STATE DISPUTE SETTLEMENT

The latest CETA text pays lip service to public concerns about investor–state dispute settlement (ISDS) by replacing it with what the EU and Canada are calling an Investment Court System. While it improves some procedural aspects of ISDS—for example, by making arbitrators less prone to conflicts of interest—the protections afforded to investors in this new ‘court’ system are largely unchanged.

Under CETA, foreign investors still receive extraordinary legal rights to sue governments for measures that may negatively affect their investments. These protections, which are not available to domestic investors or ordinary citizens, would expose taxpayers to huge financial liabilities and threaten to chill public policy. Although the text mentions a so-called right to regulate, the clause is a guideline and does not adequately protect public interest regulation.



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## FINANCIAL SERVICES

By allowing more cross-border financial services and facilitating greater direct investment in the financial sector, CETA would encourage the financial industry to take greater risks—for example, by engaging in speculative investment—in order to survive in a more competitive international market. CETA would also limit the regulatory options available to governments to address financial instability by, among other measures, giving the financial industry an institutionalised voice in the regulatory process.

Ignoring the lessons of the financial crisis, CETA would open the financial services sectors in the EU and Canada to greater competition and put downward pressure on prudential regulation in ways that make both Parties more vulnerable to financial shocks and contagion. Furthermore,

key financial services provisions in CETA are enforceable through the ISDS mechanism, so governments could effectively be forced to pay banks for the privilege of regulating them.

## TRADE IN SERVICES

CETA would restrict governments' capacity to regulate the entry and activity of foreign service suppliers in the domestic market, even when such regulations do not discriminate based on the country of origin of firms. By ensuring market access and preferential treatment for foreign service suppliers, CETA threatens the viability of public services and local service suppliers.

CETA includes exceptions to the services rules, but its *'negative list'* approach means that all services are covered by default unless specifically excluded by negotiators. Moreover, through its *'standstill'* and *'ratchet'* mechanisms, CETA forces governments to make any future regulatory decisions in the direction of even greater liberalisation, including for many of the services that are on the list of exceptions.

## PUBLIC SERVICES

While a limited number of public services are excluded from some of CETA's liberalising provisions, key reservations are vaguely worded or flawed. The agreement's investment protections would restrict the capacity of governments to expand public services or to create new ones in the future.

CETA conflicts with the freedom of elected governments to bring privatised services back into the public sector. Once foreign investors are established in a privatised sector, efforts to restore public services can trigger claims for compensation, effectively locking in privatisation.

## DOMESTIC REGULATION

CETA would constrain policy flexibility in areas only loosely related to trade by mandating that licensing and qualification requirements—as well as any measure relating to those regulations—be *'as simple as possible'*. CETA interprets even non-discriminatory regulations as potential trade barriers.

The scope of the domestic regulation provisions is broader than in other agreements and even trumps other areas in CETA. Regulations concerning not just services but also *'all other economic activities'* are covered with only a narrow set of reservations.

## REGULATORY COOPERATION

CETA would create a set of institutions and processes for foreign governments (and their corporate lobbyists) to have a say in the creation of new domestic regulations, which could delay or halt the introduction of public interest legislation and undermine the precautionary principle. The range of regulatory areas covered by these rules is extensive, including not just goods and services, but also investment and other areas only loosely connected to trade.

Any attempt to *'harmonise'* regulations between the EU and Canada threatens to push standards down to the lowest common denominator. Moreover, business lobbyists could use this process to push for regulatory changes that are too controversial to be included in the text of CETA itself.

## INTELLECTUAL PROPERTY RIGHTS

CETA would strengthen the position of patent holders relative to innovators and consumers, which would encourage the

already destructive practice of patent trolling in software and other industries. Because intellectual property is covered by the investor–state dispute mechanism in CETA, patent holders may be able to sue governments for future regulations designed to reduce the power of patent trolls.

CETA does not directly threaten Internet freedom, but by locking in the current system of industry-friendly intellectual property rules in Canada and the EU, CETA would prevent governments from returning to a more user-friendly intellectual property regime in the future.

## AGRICULTURE

The ratification of CETA would be a severe setback for efforts to encourage non-industrial farming practices and sustainable agriculture on both sides of the Atlantic. For example, by expanding duty-free import quotas (e.g. for milk and meat), CETA would expose Canadian and European farmers to considerable competitive pressure, which could encourage more profitable (for some) but less sustainable farming practices.

Furthermore, CETA raises concerns around processing and production standards, particularly in Europe. Practices that are considered safe in Canada, such as the surface treatment of meat with acetic acid, the use of hormones in beef production, and the use of genetically modified organisms, are restricted in the EU on the basis of the precautionary principle. Under CETA, those precautions could be attacked on the basis of the *'aftercare principle'* employed in Canada's *'science-based'* regulatory approach.

CETA also undercuts the current system of geographical indications for European products. Of the 1,308 food items, 2,883 wines and 332 liquors protected in the EU, only 173 are protected in the CETA text.

## CLIMATE AND ENERGY

CETA's provisions for investment protection coupled with its weak protections for environmental and resource measures will undermine sustainable climate and energy policy in the future. Efforts to stop fossil fuel-based energy production and promote renewable energy will be threatened by CETA, which poses a grave danger to any measures put in place to reach the goals that the EU and Canada agreed to in the 2015 Paris Agreement.

CETA lacks any provisions that clearly protect regulations and measures aimed at curbing climate change or promoting renewable energy from investor attacks. The agreement's Trade and Sustainable Development chapter is thin and does not contain any concrete obligations for the Parties to develop future-oriented and climate-friendly policies.

## LABOUR RIGHTS

Despite its positive rhetoric regarding the rights of workers, CETA fails to introduce the kind of binding and enforceable labour provisions that would protect and improve labour standards in the EU and Canada.

Several EU member states as well as Canada have not ratified some of the International Labour Organisation's core labour standards or priority governance conventions. The CETA text encourages but does not obligate them to do so.

Tellingly, the labour chapter in CETA is exempt from the general dispute settlement provisions of the agreement. In the event of a dispute over a labour standards violation, CETA merely requires the Parties to engage in non-binding consultations.

## CANADA-SPECIFIC CONCERNS

Most concerns about CETA are shared by Europeans and Canadians, but a handful of CETA's impacts would be felt more negatively in Canada.

Under CETA, Canada would be forced to make unilateral changes to its intellectual property regime for pharmaceuticals that would increase drug costs. For the first time in a Canadian trade agreement, CETA would apply restrictive procurement rules to municipal and provincial governments, which could undermine local and regional development initiatives. CETA could also come into conflict with the rights of Indigenous peoples, whose traditional lands are often the target of foreign resource companies.

Other areas of Canadian concern include the impact of CETA on supply-managed agricultural sectors, and how the chapter on the temporary entry of business persons will affect the domestic labour market.

## RATIFICATION PROCESS

For the purposes of ratification in the EU, CETA has been presented as a *'mixed'* agreement. This means that, following the decision of the Council of Ministers (expected autumn 2016) and the vote in the European Parliament (expected late 2016/early 2017), all 28 EU member states must ratify the treaty. However, the European Commission and many member states are pushing for *'provisional implementation'* of CETA even before the national ratification processes.

At all stages of the ratification process, CETA's critics in Europe will have opportunities to organise against CETA's implementation. Legal actions against the agreement have already started: CETA is being challenged before the European

Court of Justice and, at the member state level, before the German Federal Constitutional Court.

In Canada, CETA must be passed into law nationally before it comes into force, which will require the approval of both the elected federal Parliament and the appointed Senate. The current government is strongly in favour of CETA and will push for its ratification as early as autumn 2016, despite opposition from a variety of municipalities and public interest organisations.