



CUPE



A Critical Assessment of the Proposed Comprehensive Economic and Trade Agreement

Between

the European Union and Canada

**A joint position of the European Federation of Public
Service Unions and the Canadian Union of Public
Employees, the National Union of Public and General
Employees and the Public Service Alliance of Canada**

Critical Assessment of the Proposed European Union (EC) / Canada Comprehensive Economic and Trade Agreement

A Joint Position Paper of the EPSU, CUPE, NUPGE and PSAC

Introduction

In late 2008 it was announced that Canadian and European officials plan to begin negotiating an extensive agreement to integrate Canada's economy with the 27 nations of the European Union. These talks have been described as involving "deep economic integration negotiations" going considerably beyond the scope of traditional agreements such as the North American Free Trade Agreement (NAFTA). As well as encompassing unrestricted trade in goods, services and investment and the removal of tariffs, the aim of the "comprehensive economic and trade agreement" (CETA) will be to also include free movement of skilled people and an open market in government services and procurement.

The push for the Canada/EU economic agreement has come from large corporations. In October 2008, the Canada-Europe Roundtable presented a Declaration setting out the agenda for negotiations that was signed by more than 100 of the largest corporations in both Europe and Canada. A business-orientated study of the proposed agreement concluded that the trade agreement would increase bilateral trade and investment by at least \$40 billion a year, mainly in trade in services. It appears however that those numbers were not based on rigorous research.

On the other hand, there has not yet been any impact assessment of the social, environmental and economic effects of a future trade agreement (as of July 2009) although negotiations have started in October of 2009. The European Commission is obliged to carry this out and the Canadian government has indicated that it will also do so.

Free trade, or more liberalized trade, has been a major part of the international agenda, but it is all the more important to assess these impacts in light of the serious recession that has engulfed the world's economies. Certainly in light of the environmental crisis we face, we need to move towards more sustainable development. A large number of economists and political leaders of almost every colour now realize that new models of international cooperation have to be developed.

The need to, at the very least, re-evaluate the existing model of international commerce does not seem to have had any impact on the push for a comprehensive economic and trade agreement (CETA) between the EU and Canada. Proponents of the agreement are acting as if nothing has changed and no doubts about the model need be entertained.

Doubts about the Automatic Benefits of Free Trade

Even before the economic collapse, there were doubts in many circles regarding the conventional wisdom about the direction that liberalized trade is taking.

The US is a good example. Many ordinary Americans have long been suspicious of free trade, seeing it as a destroyer of good-paying jobs. American economists have mostly been supportive of free trade. For the majority, free trade has been an automatic good.

But over the last few years, even before the economic downturn, doubts have been creeping in. Economists were starting to note that their ideas can't explain the disturbing stagnation in income that much of the middle class was experiencing. "Previously, you just had extremists making extravagant claims against trade", says Gary C. Hufbauer, a senior fellow at the Peterson Institute for International Economics. "Now there are broader questions being raised that would not have been asked 10 or 15 years ago."

Concern has been rising that the gains from free trade may mostly be going to a small group at the top. Dartmouth's Matthew J. Slaughter, an international economist who served on President George W. Bush's Council of Economic Advisors, notes that for the vast majority of Americans, income growth has all but disappeared in recent years. Inflation-adjusted earnings have fallen in every educational category other than the 4% who hold doctorates or professional degrees.

Empirical Evidence

The empirical evidence that freer trade has been a positive factor for the world economy has not been conclusive or convincing. On the other hand there is certainly strong evidence to show that freer trade has its negative side, in particular where it includes goods and services that need to be allocated on criteria other than purchasing power.

It is now commonly accepted that the era of liberal globalization has brought about increased inequality within most countries and between them. Workers in industrialized countries have suffered relative and, in some cases, absolute declines in real income. OECD statistics confirm that from 1995 to 2005 in all countries except Ireland and Spain, the earnings for the 10% best-paid workers increased more than the earnings of the 10% least-paid workers. Labour market institutions designed to shelter workers from the vicissitudes of unfettered markets are under stress everywhere. While other factors might have played a role in these trends, increased international competition is seen as a significant cause.

In his 2002 book, Nobel Prize winning economist Joseph Stiglitz wrote that "trade liberalization accompanied by high interest rates is an almost certain recipe for job destruction and unemployment creation".

The ILO reports that income inequality grew dramatically in most regions of the world in the 1990s. The gap between richer and poorer households widened, which "reflects the impact of financial globalization and a weaker ability of domestic policies to enhance the income positions of the middle class and low-income groups".

The Morgan Stanley Company has reported that in the EU, United Kingdom, US, Canada and Japan, the share of national incomes that goes to corporate profits has shown a steady increase from the year 2000, while the share that goes to workers' wages has dropped.

Canada, US, and Mexico Free Trade Agreement

For Canada, the North American Free Trade Agreement (NAFTA) is the classic example.

Under NAFTA and, of course, the wider World Trade Organization agreements, Canada had lost some 360,000 manufacturing and processing jobs before the current economic crisis hit.

A Canadian Centre for Policy Alternatives study shows that the companies represented by the Canadian Council of Chief Executives (CCCE), the leading supporter of free trade, after succeeding in their goals of free trade with the US, shrank their workforce by 19.6%, a loss of over 118,000 jobs, while their revenues grew by 127%. In fact during the first 13 years under trade agreements like NAFTA, Canada created less than half as many jobs as during the previous 13 years.

The idea that low wage countries like Mexico benefit is also not true. For example, contrary to predictions of 5-10% wage growth in Mexico after NAFTA's implementation, wages fell by 16% between 1994 and 1999.

In October 2007, on the eve of the 20th anniversary of NAFTA, New Democratic Party International Trade Critic Peter Julian presented an analysis of figures from Statistics Canada that shows a drastic increase in income inequality for most Canadian families since 1989. The statistics show that Canadian families are worse off today than they were before NAFTA was implemented in 1989, and that Canada's top earners are making more while most ordinary Canadians are seeing a decrease in actual earnings.

The top income category is earning on average \$20,000 more than they did in 1989 after accounting for inflation. Most other Canadians have lost income. In fact, Canadian households earning below \$60,400 have seen a decrease in their average earnings, before tax and federal transfers to families. Households representing 60% of incomes experienced a decrease in their income share in 2005 as compared to 1989. Income share for the richest 20% of Canadians has been continuously increasing to the point where they take nearly 50% of all income.

The EU and Free Trade

The European Commission asserts that "globalization means that the flows of goods, services, capital, technologies and people are spreading worldwide, as countries everywhere open up to wider contact with each other. Globalization can create more wealth for everybody, but it can also be disruptive and needs to be harnessed by international rules. When business goes global, the rules for fair play must also be set globally."

War on Want, however, has done a report examining the empirical evidence of the impact of EU free trade agreements on jobs. They note that the EU's own impact assessments have shown that trade liberalization will cause "large-scale redundancies" in the EU itself, as well as a decline in employment terms and conditions. They note that labour's share of national income in Europe has declined sharply in the three decades since 1980, partly as a result of mass unemployment and the declining influence of trade unions under the impact of globalization.

To quote from the War on Want report:

“According to the IMF, the quadrupling of the number of workers competing in the global market since 1980 has led to more finished goods being imported into the OECD and more off-shoring of intermediate goods production, decreasing labour’s share of GDP in industrialized economies. Similarly, the OECD’s own analysis shows that “foreign competition reduces employment in the most exposed industries” in its 30 member countries.

“The EU has accepted that trade liberalization causes ‘large-scale redundancies’ and a ‘decline [in] employment terms and conditions’ in the EU. It notes that globalization causes ‘major structural changes in world trade patterns’ via ‘a substantial increase of imports into the European Union, or a rapid decline of the EU market share in a given sector or delocalization to third countries’. This has ‘a significant adverse impact on the regional or local economy’ of EU countries.

“The EU even accepts that workers in small and medium-sized enterprises, as well as large companies and multinationals, in ‘[all] Member States, large and small, new and old’, risk losing their jobs because of these ‘negative effects of globalization’.”

Looking through the other end of the telescope, Mexico entered into a free trade agreement with the EU in 2000. According to a 2007 report by Mexican trade experts Manuel Perez Rocha L. and Rodolfo Aguirre Reveles (The E.U.-Mexico Free Trade Agreement Seven Years On: A warning to the global south): “Instead of the promised economic and social benefits, the treaty has left the Mexican state unable to implement policies to promote small and medium sized companies ... across various economic sectors the FTA has worked to the benefit of European transnational corporations and to the detriment of Mexican industries.”

New Social Programs

NAFTA, and other trade deals, can act as a huge brake on the development of new public programs. If a new social program is introduced, Canada may be forced to pay compensation to companies from either the US or Mexico that provide this service on a for-profit basis. Even if these companies hadn’t been active in Canada, they can claim foregone profits. Academics refer to this as the ratchet effect; services can and will be progressively “liberalized” which means privatized, but they cannot be moved back, nor can any new areas be brought into the public sector.

Canada has had two provincial governments back off introducing public auto insurance because this would have opened them up to a NAFTA challenge. A new national Pharmacare program would require Canada to deal with US drug companies and insurance companies who will argue that their inalienable right to a profit from these areas is being compromised, which is not allowed under NAFTA or other trade deals.

A Threat to Existing Social Programs

Canada

Trade deals are seriously jeopardizing Canada’s ability to keep the public services the country already has, programs which are deeply valued by Canadians.

NAFTA, which gives US and Mexican companies the right to challenge the laws and regulations of Canadian governments, whether federal, provincial, or municipal, has provided a dangerous new weapon to private companies. Under NAFTA, private companies can challenge decisions of our governments in ways that citizens cannot do. If a company in the US wants to challenge the Canadian government's actions, they can do it before a trade tribunal that operates outside of public scrutiny.

If a government action in Canada is found to violate trade deals, then no matter how much that law or regulation reflects the will of Canadians, the government involved will have to pay damages to whichever company in the US or Mexico brought the challenge.

Progressive groups in Canada have always argued that this provision will make cherished public programs vulnerable.

Now there is, as long predicted, a challenge to public Medicare in Canada. The company involved wanted to build a private surgical centre in BC. They claim they encountered "anti-American" roadblocks, that their rights as investors were affected, and that therefore the Canadian government owes them damages. They want \$4 million for their expenses in making their for-profit plans, and they want \$150 million because of foregone profits. NAFTA gives US companies the right to compensation for profits they might have made if they were allowed to set up their companies in Canada.

Part of the argumentation in this fledgling challenge is that Canada, and British Columbia in particular, have increasingly opened up health care to the for-profit system, and that once they have opened the health sector up to for-profit companies, they can't then exclude companies from any of the NAFTA countries.

The European Commission

The European Commission has stated that "the effective performance of a general interest task prevails, in case of tension, over the application of Treaty rules (on competition)", which basically means that solidarity should come first. But the laws coming from the EU are not doing this; on the contrary, they are undermining public services and the values they represent. Conflicts between the internal market rules and public services have had a significant impact on the structure of public services in Member States through four main mechanisms:

- liberalization directives prohibiting integrated public sector;
- legal challenges to the funding of public services, based on the Treaty's restrictions on State aid;
- legal challenges to direct provision of services by public authorities, or to restriction on provision of services within a country (for example health care), based on competition rules; and
- liberalization of trade in services (GATS) at the WTO, where the EC may enter negotiations which can lead to services being opened to private competition.

Within the European Commission public services are part of the Directorate General (DG) Internal Market, which is the DG responsible for removing obstacles to competition. Only "non-economic" services without effect on trade are beyond the reach of Community rules on competition and on State aid. However "*non-economic*" has no

meaning outside the EU legal context of competition policy and it is the European Court of Justice (ECJ) that decides on whether a service is economic or not, on a case by case basis. As soon as there are private operators in a specific public service area, it can be argued that the service is “*economic*”. This is more and more the case.

The European Federation of Public Service Unions (EPSU) has called for education, health, water, waste and social services to be exempted from competition policy all together, but this is difficult because of the supremacy of competition law and the differences within Member States. Discussions taking place on exempting certain sectors and/or activities below certain thresholds from the EU policy on State aid are difficult. Agreeing (at national level) “no-go” areas for private (profit making) companies, e.g. the Dutch law preventing privatization in water can slow down, but not stop, the encroachment of competition law. In the absence of specific EU laws protecting public services, the EU will continue to “open-up” public services to competition and, when this is done, it is difficult to maintain (or indeed, develop) public service obligations on the (private) operators.

In any case, EU citizens want the EU to be present in social matters. A recent poll shows that just over half of Europeans consider the EU has a positive role in employment, and this figure rises considerably when addressing specific issues. Seventy-eight percent think the EU has a positive role in improving access to education and training, 76% on promoting gender equality, 73% on combating other forms of discrimination and 72% on creating job opportunities and fighting unemployment.

The Right to Public Services is Protected?

Canadians have always been told that under NAFTA or the World Trade Organization trade deals, including the General Agreement on Trade in Services (GATS), Canada’s right to deliver public services, especially Medicare, was fully protected. Many groups and individuals have continually expressed doubts about how strong that protection was in any event, but there has been an especial concern that the more Canada or any of its provinces allow privatization of any public service, such as Medicare, the more vulnerable to a trade deal challenge that service becomes.

Organizations have asked the Canadian government if the protection for public health care for example, is still valid if part of our Medicare system is privatized. For example, if one private hospital is allowed in Canada, does the exemption of Medicare from the coverage of trade deals still work? Government officials have responded that this was a very good question, and that someone would look at that issue and provide a response. No response has yet been forthcoming, several years later.

Meanwhile the EU is very open about its goal for public services such as transport, energy, postal services and telecommunications; they should be open to competition. The EU Commission claims that “the European Commission has been instrumental in opening up these markets to competition (also known as liberalization). This [is] even when these services have previously been provided by national organizations with exclusive rights to provide a given service”.

Investor-State Rights

As already mentioned above, one of the most undemocratic provisions of NAFTA has to do with the right of investors to directly challenge the actions of governments in the other NAFTA countries. NAFTA allows foreign companies to pursue governments directly for damages for alleged violations of the trade agreement.

And companies have certainly done so. They have challenged the public's right to regulate the environment, culture, agriculture, natural resources, jobs and health and safety. As of January 1, 2008, there had been 49 investor-state claims under NAFTA: 18 against Canada, 17 against Mexico and 14 against the US. So far, Canada has paid \$27 million in damages and Mexico, \$18.7 million.

This kind of challenge is ongoing. An Exxon-Mobil subsidiary is suing Newfoundland and Labrador for \$40 million because the province demanded a fixed amount of local research and development. Chemtura Corp. is suing Canada for \$100 million over the ban on its pesticide Lindane, a neurotoxin and suspected carcinogen.

Tobacco growers in Kentucky have launched a protest against the Canadian government over a proposed new anti-smoking bill which they argue will lead to a ban on the vast majority of US cigarette exports to Canada. This was sparked by the introduction amendments to the Tobacco Act that would ban the addition of certain flavours and additives to cigarettes and cigarillos that the federal government says are marketed at children and teenagers.

Dow AgroSciences is considering using the investor-protection provisions of the North American free trade agreement to seek compensation over Quebec's ban on the cosmetic use of pesticides. Dow says the Quebec ban, outlawing the use of bug and weed sprays for merely appearances' sake around homes, breaches legal protections owed by Canada to US investors under the trade agreement.

The investor state provisions allow the reach of so-called trade deals to extend into almost any area of government law or regulation.

Labour Mobility

One of the very significant areas to be addressed under this set of negotiations is the issue of labour mobility.

The international union movement has been very skeptical of the notion that labour mobility issues should be dealt with as trade issues, or dealt with by trade tribunals.

The trade union movement has been very leery of unregulated temporary cross-border movement of employees. The position has been that this works to the detriment of workers and communities both in the countries of origin and of destination. It is far better to have orderly arrangements for permanent migration where necessary, including full measures to guarantee migrant workers equal rights, encourage their full integration (including through acquired rights to permanent residence and citizenship), prevent exploitation by employers and protect them against all forms of discrimination. Temporary migration such as that contemplated under trade agreements must be allowed for in a way that protects migrant workers' rights.

The international union consensus is that if any governments do want to arrange for the temporary movement of workers, these must be agreed on with the trade unions concerned on a prior basis and must ensure: observance of core labour standards, national labour law (incorporating and going beyond those standards) in the country where the service is delivered, and existing collective agreements in the host country by all parties, with regard to all workers concerned; full involvement of the ILO; protection of the workers concerned against all forms of discrimination and exploitation; and guarantees of the remittance of their contributions to social security and insurance schemes. In the absence of such conditions, negotiations on labour mobility should not go forward.

Trade unions have been concerned that the usual model of trade based labour mobility will result in a global guest worker program which could deplete the scarce human resources of poorer countries, while failing to ensure equality of treatment with nationals of host countries, in terms of wages, conditions of work, and social protections. Typically, migrant workers in temporary contracts are not allowed the option of family reunification, training opportunities, immigration rights, incentives to integration and basic social rights. They are difficult to organize and are often hesitant to join trade unions for fear of the employers' threats not to guarantee their employment and residency status. Such conditions also result in the exclusion of migrants from society and contribute to discrimination, racism and xenophobia.

Given the fact that this area involves negotiations of labour services and people, it cannot be treated as a purely trade issue nor a purely migration management concern. Labour migration is about ensuring protection of human rights and labour standards. The competencies and structure of the trade negotiations do not enable them to regulate the temporary cross-border movement of workers in a manner that protects migrant workers' rights. Consequently, the trade negotiations should not be the place for decisions in this area.

In the EU, the ETUC has expressed serious concerns over the European Commission's migration policy, arguing that increased mobility on the European labour market(s) must be accompanied with appropriate social policies and employment protections.

Government Procurement

The issue of government procurement looms large in the proposed Canada/EU negotiations.

The object appears to be an agreement under which national and sub-national governments would be required to allow companies from anywhere in the combined jurisdiction of the EU and Canada to bid as equals on government contracts for both public sector goods and services, which would therefore end the favouring of local or national providers of public sector services.

In the EU/Canada Joint Study, the Canadian private sector notes that the purchasing power of government amounts to as much as 20% of GDP in the world's largest economies. This would provide a significant market for the private sector if it were opened up. Corporations from both jurisdictions have called on the EU and the government of Canada to act decisively in favour of opening of public procurement

markets in all Canadian and EU jurisdictions, both at federal and sub-federal levels. This has been identified as a key issue in the negotiations.

Canada's large international investors have stated their willingness for the Canadian government to give up the existing protection for government procurement in exchange for preferential access to the EU market. Similarly, European private sector interests dispute Canada's efforts to protect urban transport, shipbuilding, water, electricity, and similar activities. In other words, transnational corporations in both Canada and the EU want the right to deliver public services.

Of course any national or sub-national government can now choose to open its public infrastructure or services to bids from anyone in any jurisdiction. However, it is hard to accept that any international agreement should prevent municipal, provincial, territorial state or federal governments from investing public resources in job creation, community economic development and economic renewal through its purchasing policies. In a period of severe economic downturn and job losses, neither Canada's nor the EU member states' interests would be served by trading away the power of governments to support economic renewal and job creation.

National and sub-national limits on government procurement are often labeled as "protectionism", but that is not accurate or helpful in understanding the issue.

As a starting point, it seems self-evident that the vast majority of taxpayers in any jurisdiction would not want their tax money to be spent to buy products from another country at the expense of local suppliers. Purchasing public supplies or services from other countries does not assist or stimulate the economy in the originating jurisdiction.

If procurement is simply thrown open internationally, clearly the bias will be to low wage, low cost producers. One nation's tax dollars would be going in part to companies in areas where unionization is limited, and where wages are therefore very low, and where legal rights are ineffective.

It would seem clear that, when spending public monies to purchase goods and services, our governments have a responsibility to support their local companies and workers.

Government procurement is not just about goods; it is also about services. Any move to have national and sub-national government procurement covered by free trade provisions will leave governments open to bids on local services from low-wage companies anywhere in the jurisdiction covered by the trade agreement. The EU has already experienced local suppliers of services being pre-empted by lower wage providers of that service from countries with lower standards of living.

Currently, Canadian provinces and municipalities are not prevented from requiring public funds to be used to ensure Canadian content in goods and services are purchased. This right should not be casually surrendered. The right to use taxpayers' money to the benefit of the taxpayers is a very important trust and should be carefully protected.

It appears clear that the large service sector corporations in both Canada and the EU are very keen on the opening of government procurement of public services to the private sector, but that does not mean it is in the public's interest to do so. What this

corporate encouragement really means is that transnational corporations in both Canada and the EU want the right to deliver public services on a for-profit basis and the ability to locate as much of the service provision in low wage jurisdictions.

The proposals to expand trade-treaty coverage of procurement contain an imminent threat of privatization. The Joint Study on the EU Canada negotiations states that EU private sector interests will attempt to define “public procurement” broadly enough to include public services. As the joint study reports:

“ ... enhanced procurement market access should reflect a broad definition of procurement and include procurement in areas of public services such as health and education.”

This would increase the for-profit presence in activities that are meant to serve social goals. The EU private sector would clearly like the right to bid on all government contracts for the private delivery of services, as would Canada’s service companies like the legal right to bid for all EU public services. This is a way of getting through trade agreements, something that they could not achieve directly in their home jurisdictions. This would weaken the safeguards currently governing areas of public provision in other international commitments, such as Canada’s exception for health care.

It seems likely that covering national or sub-national government procurement under trade agreements would mean that any kind of fair wage policy for government procurement would not be allowed to stand as it would be ruled as an “unnecessary obstacle” to trade.

The issue of the public right to control water systems looms large in these talks. Canada has already seen major battles over the proposed privatization of water supplies and delivery systems. Canadian communities have been largely successful in keeping water as a public service. But it is clear that the water multi-national companies see a possible trade agreement as another way for them to get access to Canada’s water systems; among the transnational companies to sign the Declaration setting out the agenda for EU Canada negotiations were water multinationals Suez and Veolia from France.

The European Commission claims there are major savings to be made from increasing competition in the procurement processes: “Local and cross-border competition in this area is delivering savings, with contracting authorities spending on average between 5-8% less than they had originally earmarked. This could translate into increases in GDP of between 0.08-0.12% (equivalent to 160,000-240,000 jobs) if continued over the next decade.” On the other hand, the Commission has made no assessment of possible impacts on the level and quality of employment, or quality of services.

Domestic Regulation

We can get an understanding of the possible impact on the right of countries or jurisdictions to regulate matters within their area of competence by looking at the negotiations around the General Agreement on Trade in Services. Rules being considered there would restrict laws and regulations, at all levels of government, even when they don’t discriminate against or between foreign investors. Such restrictions would seriously curtail governments’ right to regulate and weaken governments’ ability to protect the public.

GATS Article VI:4 would have specified that members shall develop any “necessary disciplines” to ensure that “measures relating to qualification requirements and procedures, technical standards and licensing procedures do not constitute unnecessary barriers to trade in services”.

The scope of the proposed restrictions, measures relating to qualification requirements and procedures, technical standards and licensing procedures, was extremely broad. For example, *licensing requirements* include not only professional licensing, but also broadcast licenses, university accreditation, licensing of facilities for clinics, hospitals and laboratories, waste disposal permits, municipal zoning approvals and many other matters. *Technical standards* would include standards related to water quality, sustainable forest management, toxic waste disposal, educational quality and many other vital regulatory matters.

The “right to regulate” could only be exercised in accordance with the GATS obligations, including the proposed disciplines on domestic regulation. Even if governments remained free to determine the ends of regulatory action, the means would be subject to GATS challenge and WTO oversight.

It also needs to be emphasized that the proposed restrictions aim to expand trade treaty coverage directly into regulatory matters that are only peripherally trade-related. The joint EU/Canada scoping report for the negotiations indicated that “regulatory provisions [covering services] would be a useful complement to market access and non-discrimination and would play a positive role in facilitating the provision of cross-border trade in services.”

There is strong evidence that the Canadian public don’t believe government’s ability to regulate should be restricted. In a recent poll 77% of Canadians were opposed to weakening regulations and believed that the main consideration for regulations should be to protect health and safety, working conditions and the environment. Sixty-seven percent of Canadians felt that strict standards enhance international competition. Only 22% felt that government regulations needed to be relaxed to enhance international competition.

In Canada, even removal of what are called interprovincial barriers to internal trade have been problematic. As an example, provincial Agriculture ministers agreed to make “technical measures” such as packaging requirements, subject to the Canadian Agreement on Internal Trade without consulting farmers. The Canadian Federation of Agriculture condemned the lack of consultation with farmers and indicated that the changes will lead to “to the lowest common denominator for food product rules.”

The willingness of governments to restrict their ability to regulate on behalf of the public interest is reflective of the mindset of those who believe that sweeping trade deals are the best path for all governments to follow, and they are the sort of provisions that are clearly envisaged in the proposed EU Canada negotiations.

Relationship to NAFTA?

If a new economic deal is concluded between Canada and the EU, the provisions of NAFTA will require all of the same benefits to be extended to investors and service

providers from the US and Mexico. That is because NAFTA includes a “most favoured nation” clause within its chapter on investment and services. Article 1103 of NAFTA specifies that each NAFTA country shall provide “treatment no less favourable” to another NAFTA party than it provides to any other party. This will simply deepen the harmful impacts of NAFTA and strengthen corporations at the expense of labour and other sectors. It could also lay the groundwork for a future transatlantic free trade agreement between the EU and the US.

Free Trade versus Fair Trade and Sustainable Trade

Unfortunately in the EU the discussion on Fair Trade has been compartmentalized and tends to be seen in the context of trade with developing countries. The European Commission adopted on 5 May 2009 a Communication on the role of Fair Trade in contributing to sustainable development. The Communication provides an update on developments arising since the 1999 Communication on Fair Trade and sets out the criteria that underpin the concept of “fair trade”. The Communication also says that “Environmental and social criteria may also be incorporated in the execution clauses, provided these criteria are linked to the execution of the contract in question (e.g. minimum salary for the workers involved in the performance of the contract)”. This reflects a restricted view of social procurement. It is ironic that the EU insists on this narrow view of ILO standards at a time when the ILO itself is broadening their stance. The ILO text “Recovering from the Crisis: A Global jobs pact” adopted in June 2009, for example, includes also labour inspection and administration, social dialogue mechanisms, labour conditions in public contracts, social security and many more.

Nor is there a link in the EU between trade and sustainable development. The European Commission is obliged to assess the social and environmental impacts of all its policy proposals, including trade. In a letter to the EPSU General Secretary of 23 July 2009 the EC trade Commissioner Catherine Ashton affirmed this; “let me assure you that social and environmental considerations.....are an integral part of our trade policy”. However this claim does not square with reality and indeed, if social considerations are referred to at all, it is increasingly in a minimalist way. In 2006 EU sustainable development strategy, for example, “public health”, “social inclusion” and “global poverty” feature in the seven key challenges but there is no reference to other social policy objectives such as equality, cohesion or social and economic convergence. In the Communication preparing for the renewed EU sustainable development strategy to be adopted by the end of 2009 the focus is entirely on social inclusion for “the most vulnerable” in society and while there is reference to the international dimension of sustainable development this is in relation to combating poverty. There is no explicit link with trade policy.

In the Canadian experience it has too often been the case that trade rights have overridden environmental considerations. Existing trade agreements have as their focus the narrowly defined economy, not the ecosystems that sustain that economy or even the communities that exist within the economy. Under NAFTA, the right of provinces of Canada to regulate against the use of cosmetic chemicals for lawns has been challenged by a US company as an infringement of the chemical company’s right to sell its products. Under the WTO agreement Canada has successfully challenged the right of European states to limit the importation of genetically modified organisms (GMO’s), getting this ban on imports ruled as a trade infringement, although some European countries are continuing to do so. Water could easily be turned into a commodity under

the provisions of trade agreements like NAFTA or even the GATS and communities could lose their right to control this essential public good.

Summary and Main Demands

In October 2009 the EU and Canada opened negotiations for an extensive trade agreement. As well as encompassing unrestricted trade in goods, services and investment and the removal of tariffs, the aim is the “comprehensive economic and trade agreement” (CETA). The goal of CETA will be to also include free movement of skilled people and an open market in government services and procurement.

EPSU and Public Service International's (PSI) Canadian affiliates have serious reservations about the scope and the process of these negotiations and underline that:

1. The potential impact of a trade agreement has not been evaluated. The European Commission has a mechanism for informing civil society on trade developments (Civil Dialogue) but the level of discussion is very general. A consultation paper issued by the Commission contains questions addressed primarily to the business community. There have been no preliminary, independent studies or broad stakeholder debate and consultation. This would have helped evaluate the real impact of any trade deal on the economy, on poverty, gender, human rights and the environment, both within the EU and in the globalized world. The European Commission's impact assessment guidelines, adopted in January 2009 are insufficient and an improved process is required, as called for by the Spring Alliance, an EU coalition of trade unions, environmental groups and social NGOs. Information and consultation of PSI's Canadian affiliates are also inadequate.
2. We need full transparency. In past trade negotiations, the public has been kept completely uninformed until the full agreement is reached and then presented with a fait accompli. This is simply unacceptable. Trade agreements have a wide and far reaching effect on many aspects of government rights, public rights, public services, and the public has the right to full disclosure along with the right to informed input into any such negotiations.
3. Any agreement should fully protect public services as delivered by the current systems, as well as the ability to create new public services, without reservation, and without negative impacts from a trade based agreement.
4. Labour mobility needs to be anchored in any agreement as a right for workers, not designed to serve the interests of employers. Rather than as part of a trade based agreement it should be drawn up as a separate agreement, with guarantees of employment protections.
5. There should be complete reservation of the right to domestic regulation regarding public services and on all issues except those explicitly, solely, and directly related to commercial affairs.
6. The agreement should not include any commitment to the opening up of public procurement, especially given the current uncertainties over the right of public authorities to include social criteria in public contracts. Canada and all the EU

Member States need to ratify ILO Convention No. 94 on social clauses in public procurement. The EU should encourage all Member States to ratify Convention No. 94 as quickly as possible and strengthen the legal framework applying to social procurement. The upcoming EC Guide to Socially Responsible Public Procurement should give clear support to the Convention.

7. It has to be clear in any agreement that the environment and labour rights must always trump trade; these are not side issues but are intrinsic to any dealings between the two jurisdictions. In particular, social (and environmental) considerations must be taken into account in all international agreements, including those related to trade. The EU should push for a social dimension to regional economic integration in all regions of the globe, including Europe. This dimension should actively encourage and promote social and employment rights, including trade union rights.
8. The provision in some trade agreements that gives individual companies or investors the right to challenge governments in other countries has created too much uncertainty, and has resulted in challenges to laws and regulations even where the governments that signed the agreement have expressed no concern about a violation of the agreement. There should be no right for an investor or private company to directly challenge the laws or regulations of a foreign government that is a party to the trade agreement, but this right to challenge should reside solely with the competent government jurisdiction.