

*Brief 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*

Brief presented to the Standing Senate Committee  
on Foreign Affairs and International Trade

by the Réseau québécois sur l'intégration continentale (RQIC)

April 26, 2017

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## **About us**

Founded in 1986, the Réseau québécois sur l'intégration continentale (RQIC) \*\*\*\* and is a large multisectoral coalition that brings together some 20 social organizations in Quebec, including union, community, grassroots, student and environmental organizations, women's groups, and human rights and international development organizations. Altogether, we represent 1 million people in Quebec.

The RQIC's objective is to propose a vision of development that respects social, labour and human rights and to promote democracy, involvement, respect for the environment and the eradication of poverty. The RQIC's mission is to promote democratic participation and access to information for the people of Quebec and their organizations on hemispheric integration and free trade agreements.

Since its creation during the FTA negotiations between the United States and Canada, the RQIC has established itself as an important stakeholder in Quebec civil society in economic integration and international trade. Since 2010, the RQIC has focused on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union.

## **RQIC members**

Alliance du personnel professionnel et technique de la santé et des services sociaux (APTS), Alternatives, Association canadienne des avocats du mouvement syndical, Association québécoise des organismes de coopération internationale (AQOCI), Attac- Québec, Centrale des syndicats démocratiques (CSD), Centrale des syndicats du Québec (CSQ), Confédération des syndicats nationaux (CSN), Conseil central du Montréal métropolitain (CCMM-CSN), Fédération des femmes du Québec (FFQ), Fédération des travailleurs et travailleuses du Québec (FTQ), Fédération étudiante collégiale du Québec (FECQ), Fédération interprofessionnelle de la santé du Québec (FIQ), Génération nationale, Mouvement d'éducation populaire et d'action communautaire du Québec (MÉPACQ), Réseau québécois des groupes écologistes (RQGE), Syndicat des professionnelles et professionnels du gouvernement du Québec (SPGQ).

## A duty to debate

Even though the Comprehensive Economic and Trade Agreement (CETA) will have major impacts on Canada and Quebec, the Standing Senate Committee on Foreign Affairs and International Trade (AEFA) could not guarantee an appearance for the RQIC and recommended that we submit a brief that, we are told, will be distributed to committee members.

We insist on appearing before the committee since the ability to talk to committee members about the arguments in our brief are crucial in light of the pro-CETA rhetoric governments are dishing out these days. The ability to discuss our arguments is especially important given that opponents of free-trade agreements like CETA are being painted as protectionists who seek to isolate their country from the world around it. Our issue, rather, is the loss of sovereignty that states seem ready to swallow by implementing the CETA.

This reluctance to hear the RQIC defend its brief follows on the heels of so-called consultations in December 2016 by the House of Commons Standing Committee on International Trade (CIIT), which heard witnesses predominantly from the business community<sup>1</sup> and refused to hear from the RQIC, ATTAC-Québec and the Confédération des syndicats nationaux (CSN), among others. By way of “consolation,” the CIIT gave us a week to submit a brief with no possibility of appearing.

We have not been able to discuss our views with parliamentarians or with the senators responsible for studying 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*. Although the timeline is still tight, the Senate gave us more time than the House of Commons (one week) to submit a brief. We also decided to take advantage of this opportunity to roundly denounce the conditions imposed on us.

What little time given to the consultations on the CETA is all the more frustrating given that Bill C-30 is marred by a host of other problems. First, the introduction of Bill C-30, which would implement the CETA, did not respect the 21-day time frame between the tabling of the CETA text and the introduction of the bill to bring it into force, both of which were presented simultaneously in the House of Commons. Moreover, the government did not provide the usual explanatory notes allowing our elected representatives to grasp the major elements of the agreement, which, it’s worth noting, is more than 1,600 pages. What are we to make of this rush to ratify the CETA, negotiated in secret for eight years, with no respect for the most basic parliamentary procedures?

Again, despite what CETA proponents would have people believe, we are not against trade and tariff reduction, subject to fair compensatory mechanisms. Rather, our concerns lie with the deregulation these types of agreements impose and the limits placed on states to legislate the protection of social rights, workers’ rights, the environment and public health.

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<sup>1</sup> <http://www.parl.gc.ca/Committees/en/CIIT/StudyActivity?studyActivityId=9212393>

## **Excessive powers given to big business**

The extent of the rights given to investors to sue governments is matched only by the restrictions placed on governments to ensure their commitments to cultural diversity, public services and support for local development. So many issues that for now are relegated to the margin of a treaty in an interpretative statement with no clear legal status.

The CETA would empower thousands of corporations to sue governments over legitimate and non-discriminatory measures to protect people and the planet. Nothing in the agreement or the accompanying statements would stop corporations from using the CETA's investor rights to bully decision-makers away from public interest regulation, for example to tackle climate change.

The CETA even leaves the door open to compensating corporations for unrealized future profits when a change in policy affects their investment. Far from "radically" reforming the investor-state dispute settlement process, the CETA expands and entrenches it.<sup>2</sup>

## **Parallel "justice" tipped in favour of investors**

The Investment Court System (ICS) grants highly enforceable rights to investors but no corresponding obligations. It does not enable citizens, communities or trade unions to bring a claim when a company violates environmental, labour, health, safety or other rules. It risks being incompatible with EU law as it establishes a parallel legal system, allowing investors to circumvent existing courts. The ICS is discriminatory because it grants rights to foreign investors that are not available to citizens or to domestic investors.<sup>3</sup>

Arbitration panels set up during investor-state claims are not governed by the principle of accountability and their decisions tend to favour large corporations. The sharp rise in investor-state cases in the past five years is fueled by interested international law firms and arbitrators who earn millions of dollars by challenging public policies in a parallel legal system.

The growing number of cases before tribunals and investment treaties such as the CETA serve their interests, and companies lobby hard to counter any attempts to amend investor-state recourse mechanisms that would better protect the public interest. Arbitrators have too much leeway in defining what constitutes fair and equitable treatment or indirect expropriation under investment treaties. Tribunals tend to award investors in almost 60% of cases, which will likely increase the number of lawsuits in the future.

For example, since NAFTA was signed, Canada has been sued 37 times and has had to pay out close to CAD\$200 million. Current proceedings are valued at approximately \$2.5 billion. This mechanism is a powerful deterrent to governments that want to make new regulations. After NAFTA was ratified, Canada decided to have "trade experts" review any new regulatory or statutory proposals. As a democratic society, is this really what we want? The goal should not be to legislate in line with trade agreements but to promote the common good. It is inexcusable to place the interests of private companies and investors above public interest and collective rights.

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<sup>2</sup> See: <http://rqic.alternatives.ca/spip.php?article205>. [in French only]

<sup>3</sup> See: <https://corporateeurope.org/international-trade/2016/02/zombie-isds>.

## **Trampling on citizens' rights**

In stark contrast to the rights for corporations, the CETA's provisions on labour rights and sustainable development cannot be effectively enforced through sanctions. They remain empty statements with no bearing on the dangers that other chapters in the agreement pose to workers' rights, environmental protection and measures to mitigate climate change.<sup>4</sup>

## **Even jobs are threatened**

An independent study of CETA's economic impacts predicts jobs would be lost in both Canada and Europe, economic growth would be slower than without the deal, and the rather small income gains would go overwhelmingly to capital owners, not workers. As a result, inequality is expected to be higher under CETA than without the agreement.<sup>5</sup>

The CETA makes Canada and the EU more vulnerable to financial crises by further liberalizing financial markets and severely restricting reforms aimed at removing key causes of financial instability and ensuring better protection of consumers and the economy as a whole.<sup>6</sup>

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<sup>4</sup> See "Labour rights" in *Making Sense of CETA*, Canadian Centre for Policy Alternatives.

<sup>5</sup> <http://www.ase.tufts.edu/gdae/Pubs/wp/16-03CETA.pdf>

<sup>6</sup> See "Inflating bank profits at the expense of citizens" in *Making Sense of CETA*, Canadian Centre for Policy Alternatives.

## A threat to public services

The CETA severely limits governments' ability to create, expand and regulate public services, and to bring them back under public control when liberalizations and privatizations fail. The CETA is the first EU agreement that makes liberalization of services the rule and public interest regulation the exception. This threatens people's access to high-quality services such as water, transport, health care and social programs, as well as attempts to provide public services in line with public interest goals.<sup>7</sup>

With the CETA, public procurement — that is, government purchasing of goods and services from the private sector — must be open to European suppliers beyond the thresholds in the agreement. The free trade principles of market access, most favoured nation (all states must enjoy all advantages under the agreement) and national treatment (services offered or goods sold by foreign companies must be treated as domestic products) should apply.

Foreign companies will be able to respond to calls for tenders in the same way as local companies, with no discrimination or differentiation, even when this is desirable. As Alexandre Maltais, a researcher at the Institut de recherche en économie contemporaine (IREC) points out:

[...] less flexibility in the rules on public contracts will prevent government authorities from achieving social, economic and environmental objectives, which were once pursued as secondary goals in government contracts. The CETA will bind governments to awarding contracts to the lowest bidder.<sup>8</sup>

European companies, which are very competitive in public procurement, could threaten Canada's social achievements. The competitiveness of some European companies is based on very low wages and a narrow social net in some European countries. However, owing to the strong incentive to award contracts to the lowest bidder, it is likely that local companies will seek the same benefits in order to stay in the race, which may have an impact on working conditions.

In addition, the "ratchet" mechanism in the agreement makes it very difficult to bring privatized services back under public control. This mechanism poses particular risks to public services, since any liberalization of service is quasi-irreversible or at the very least extremely costly. Reversing privatized services therefore becomes extremely difficult. The same applies to the creation of new public services. This provision could considerably cripple our public services. Legal provisions can be changed only in the direction of more liberalization.

## Stratospheric drug costs

The CETA would drive up Canadian prescription drug costs by at least CAD\$850 million per year. It would negatively impact fundamental rights, such as the right to privacy and data protection, and limit the EU's and Canada's ability to roll back excessive intellectual property rights (IPR) that limit access to

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<sup>7</sup> See [CETA, Public Services Under Pressure](#) and [La grande offensive sur les services publics](#). [in French only]

<sup>8</sup> Alexandre Maltais, *Accord économique et commercial global Canada-Europe : quelles conséquences pour le Québec?*, IREC research report, January 2011, <http://www.irec.net/upload/File/aecg.pdf>. [in French only]

knowledge and innovation. Some of CETA's IPRs closely resemble the text of the Anti-Counterfeiting Trade Agreement (ACTA), which was rejected by the European Parliament in 2012.<sup>9</sup>

The CETA's rules on regulatory cooperation and domestic regulation will put additional burdens on regulators and strengthen the role of corporate lobbyists in the policy-making process, potentially undermining much-needed public interest policy-making.<sup>10</sup>

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<sup>9</sup> See [ACTA-CETA similarities, Trade and Privacy: Complicated bedfellows? How to achieve data protection-proof free trade agreements](#), and "Patents, copyright and innovation" and "Canada-specific concerns" in [Making Sense of CETA](#), Canadian Centre for Policy Alternatives.

<sup>10</sup> See [CIEL letter to Minister-President Magrette](#) as well as "Limiting how and what government regulates" and "More cooperation for less regulation" in [Making Sense of CETA](#), Canadian Centre for Policy Alternatives.

## No salvation

On both sides of the Atlantic, the CETA would expose farmers to competitive pressures that undermine their livelihoods with little gain to consumers, increase corporate control over seeds, obstruct buy-local food policies and threaten high food processing and production standards, undermining efforts to boost sustainable agriculture.<sup>11</sup>

Precautionary measures to protect consumers, public health and the environment could be challenged under CETA based on claims that they are overly burdensome, not “science based” or are disguised trade barriers. Nothing in the CETA text or accompanying declarations effectively protects the role of the precautionary principle in European regulatory policy, while some sections even refer to conflicting principles.<sup>12</sup>

The CETA is the result of a largely secret negotiation process between the previous Canadian government and the previous European Commission. The final CETA text and accompanying declarations ignore almost all of the reasonable and very specific amendments proposed by civil society to address the flaws of the agreement.<sup>13</sup>

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<sup>11</sup> See “CETA’s threat to agricultural markets and food quality” in [Making Sense of CETA](#), Canadian Centre for Policy Alternatives.

<sup>12</sup> [CETA, TAFTA et le principe de précaution de l’Union européenne](#), Foodwatch France. [in French only]

<sup>13</sup> For examples of specific amendments put forward by trade unions and environmental organizations, see:

- [Protocol on Dispute Settlement and Institutional Mechanisms for the trade and sustainable development and trade and labour provisions](#)
- [Understanding on the Provision of Public Services and Procurement](#)
- [Protocol on Investment Protection](#)
- [Understanding the Precautionary Principle](#)
- [BUND proposals for amendments on public services, the precautionary principle and the promotion of renewable energy](#)

## **An agreement by and for multinationals**

As it stands, the CETA is not a progressive trade deal. It would be a mistake to adopt this treaty with its many worrying provisions as a model for agreements to come. The CETA is a backward-looking and even more intrusive version of the old free trade agenda designed by and for the world's largest multinationals. We need a paradigm shift toward a transparent and inclusive trade policy founded on the needs of people and our planet. Ratifying CETA will take us many steps further away from this much needed change.

We urge the Parliament of Canada to defend people's rights and interests against the threats of the CETA and vote against its ratification. We demand that the Government of Canada instead undertake thorough democratic consultations, with all of civil society, to lay the foundation for an innovative trade policy based on social justice and respect for the environment.

In the event that Bill C-30 is passed and CETA is implemented, we demand that the RQIC and its member organizations be asked to monitor the agreement so that critical points of view can be expressed on the impacts of the agreement on social, economic and cultural life as well as on sustainable development.