

SUBMISSION REGARDING

**BILL C-30, THE CANADA-EUROPEAN UNION COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT IMPLEMENTATION ACT**

to

**THE STANDING SENATE COMMITTEE ON FOREIGN AFFAIRS
AND INTERNATIONAL TRADE**

submitted by

TRADE JUSTICE PEI

April 20, 2017

TRADE JUSTICE PEI MEMBERS

Atlantic Chapter of the Sierra Club

Cooper Institute

Canadian Union of Public Employees - PEI

Canadian Union of Postal Workers

Council of Canadians

Citizens' Alliance of Prince Edward Island

Don't Frack PEI

ECO- PEI

Guatemala – Maritimes Breaking the Silence Network - PEI

Latin American Mission Program

MacKillop Centre for Social Justice

National Farmers' Union – Region 1 – District 1

PEI Federation of Labour

PEI Food Security Network

PEI Health Coalition

PEI Nurses Union

PEI Public Transit Coalition

Save Our Seas and Shores - PEI

PEI Union of Public Sector Employees

United Food and Commercial Workers

Trade Justice PEI is a coalition of 20 groups which has existed since the fall of 2013. We formed as a result of a shared concern about the Comprehensive Economic and Trade Agreement (CETA). Since that time we have met regularly and studied the agreement including the reservations taken by the Prince Edward Island and the Canadian Governments, the market access rules, the procurement chapter, the particular nature of the investor dispute mechanism, the intellectual property rights granted to investors and the various models and empirical studies used to forecast its impact on the economy

In all of this we have looked at how the agreement will affect Prince Edward Island: its people, its farmers, its land and environment and the functioning of its democracy.

During the last election Justin Trudeau promised public consultations on the CETA. This did not happen. Instead Bill C-30 was rushed through parliament and committee stage breaking several procedural rules in the process. This was disappointing and created an impression that our Government feared delay and public discussion.

To start this submission we are making four main points about the manner in which the agreement has been presented to the Canadian and European public. This will be followed by brief comments on the impact of the CETA on nine areas of Island life and public policy – investor state dispute provisions, wind energy development, public transit, local food policies, agriculture and the environment, health care and drug costs, the dairy industry and rural communities, government and MASH sector procurement and the future of the fishery and fish processing jobs.

CONCERNS REGARDING HOW THIS AGREEMENT HAS BEEN PRESENTED TO THE CANADIAN PUBLIC

1. This is not a progressive agreement. The CETA is very similar to all other modern trade agreements which follow the NAFTA template. Its framework is one of investor rights. The market access rules, the procurement rules, the intellectual property provisions and the investor state dispute mechanism all entrench investor rights which are enforceable through a powerful dispute settlement processes.

We ask, “In what kind of upside down world are regulations designed to protect people’s health, food safety or public safety described as “trade barriers” rather than essential public policy?” A progressive agreement would view trade rules as always subservient to these policies.

This agreement is more invasive than previous agreements in several areas. It is the first agreement to interfere with procurement in the MASH sector (Municipalities, School Boards, Health Regions and Publicly-Funded Post-Secondary Institutions), taking away important local economic development opportunities from local governments and institutions in Prince Edward Island. It is the first agreement to extend patent protection for brand name pharmaceutical companies, increasing the cost of drugs for generations of Islanders to come. It is the first agreement with a regulatory cooperation chapter which our experience with NAFTA has shown will almost definitely lead to lower standards of regulation.

The government has spun the interpretive note added to the agreement in the final hours as if it will reduce the impact of the Investor State Dispute Settlement (ISDS) process on the ability of our governments to regulate. It was even given a new name, the Investment Court System. However, the substantive protections afforded to investors are largely unchanged. They will still receive special legal rights to sue governments. And although the joint instrument refers to a “right to regulate,” governments must still conform with their CETA obligations and commitments – a circular argument which takes us back to where we started.

In some respects the ISDS provisions in the CETA are more regressive than those in other agreements. CETA’s vague definition of “fair and equitable treatment” in Article 8.10 of the investment chapter goes beyond protections for foreign investors in NAFTA’s investment chapter (Article 1105) and will almost certainly result in more successful investor lawsuits, including those related to environmental protection and natural resource conservation measures.

With respect to the increase in the cost of drugs resulting from the extension of patent protection, the increased costs resulting from the CETA (an estimated 3.6 million annually to Prince Edward Islanders) are greater than those which would have resulted from the TPP.

In conclusion, Trade Justice PEI objects to the intense communications campaign conducted by the government to try to cast the CETA as significantly different from other agreements – and even “progressive”. The CETA, the TPP, the agreement with Korea and all other modern-day agreements are based on the same template.

2. The Canadian Government’s attempt to equate free trade agreements with “openness” and opposition to them with “closedness” is troubling to us, and we would urge you to carefully consider this inaccurate characterization.

From the point of view of ordinary Island residents these agreements are limiting rather than open. They tie governments’ hands and restrict their ability to create innovative public policy. In so far as they protect intellectual property they promote monopoly and prevent competition.

The longstanding and enduring opposition to CETA in Europe has come from the heart of social democratic Europe - Belgium, Germany and France. Last September 200,000 Germans took to the streets to oppose the agreement. These protesters are from the same movements which support liberal immigration policies. Similarly, in Canada, opposition to the modern-day free trade agenda comes from those who want a more transparent and fair trading system designed by all parts of society including citizen groups and workers. In PEI, residents who have concerns about trade agreements are among those providing support to Temporary Foreign Workers and working to counter Islamophobia. We are the ones fighting closed-mindedness on immigration and on other issues.

Minister Freeland’s sweeping characterization of opposition to her Government’s trade agenda has been unfortunate and offensive and does not nurture thoughtful debate.

3. We are very disappointed that the Liberal Government has taken the same position as the previous government on ISDS provisions in trade agreements. Many Liberal MPs are still denying that ISDS

provisions have a chilling effect on public policy. As Maritimers we are familiar with at least three Atlantic Canadian cases under NAFTA which demonstrate the chilling impact of investor-state provisions.

Most recent is the notorious Bilcon case in which a US company called Bilcon sued Canada for \$300 million because it didn't like a decision of a joint federal-Nova Scotian environmental assessment panel which recommended against a massive extension of a quarry in Digby Neck. Bilcon won. In this case the panel member, chosen by Canada, explicitly stated in his dissenting decision that the ruling would have a chilling effect on rulings of Canadian environmental assessment panels.

And it is well-understood that cigarette plain packaging legislation would arguably be stronger in Canada if there hadn't been a threat of an ISDS challenge by US based cigarette companies almost 20 years ago.

4. Over the past few years increasing numbers of economists have argued that modern-day trade agreements are not a tool for shared prosperity and instead contribute to increasing inequality. Indeed, a glance at the potential impacts of the CETA on the Island economy – the challenges to the dairy sector and the rural economies it supports, the increase in drug costs, the inability to create robust policy around the processing of seafood and fish, the inability to implement the most effective “local food” policies and the restrictions on local government and MASH sector procurement –and we see the dynamics which take money out of the local economy and hand it to the elite and larger players in global markets.

Dani Rodrick, Professor of International Political Economy at Harvard's University's John F. Kennedy School of Government says "The trouble is that the real world has not lined up so neatly with trade economists' assumptions. Critics of trade agreements have marshaled countless anecdotes about the adverse effects of imports on wages and employment in affected communities. Recent empirical work by three academic economists – David Autor (MIT), David Dorn (University of Zurich), and Gordon Hanson (UC-San Diego) – shows that the critics have a point (and then some)."

The computer-generated modelling of the outcomes of the CETA produced by the EU Commission and Canadian Government as a promotion tool in the early days has been discredited. One of a few research papers done since the release of the final text of CETA was released by Pierre Kohler and Servaas Storm of the Global Development and Environment Institute at Tufts University. Its more sophisticated modelling using the United Nations Global Policy Model (GPM) allows for unemployment and inequality and concludes “.... in the current context of tepid economic growth, competitive pressures induced by CETA will cause unemployment, inequality and welfare losses. At a minimum, this shows that official studies do not offer a solid basis for an informed decision on CETA.” The study predicts that the deal will result in increased inequality and the loss of 23,000 jobs in Canada.

THE IMPACT OF CETA ON NINE ASPECTS OF ISLAND LIFE.

Introduction

Over the past few months Trade Justice PEI has begun to consider what a just trading system would look like. Trade liberalization over the past 35 years has taken us in a dangerous direction, making free access to markets with no strings attached and amplified investors' rights, the pinnacle achievement of trade rules. In the meantime policies protecting peoples' health, policies addressing climate change and policies promoting economic fairness and environmental and agricultural sustainability have been deterred by trade agreements or prohibited as "barriers to trade". Governments' policy flexibility has been diminished.

As Thomas Piketty, famous French economist and author of "Capital" and critic of the CETA wrote recently "...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 Prince Edward Island we face an uncertain future. We face climate change, changing employment patterns and systems of production which pose challenges to our eco-systems. For all of these reasons, the future demands on public policy (regarding both local economic development and environmental sustainability) are unpredictable. Prince Edward Island is still developing its public transit system and still has a long way to go. The community is better educated than ever about the consequences of the industrial potato industry on the health of Island families and the health of our eco-systems. The lobster fishery on Prince Edward Island faces challenges connected to the price which fishers are getting at the wharf. We may be surprised what policies Islanders will be demanding of their government in 15 or 20 years time. We need to preserve a full range of policy options rather than give them up in trade and investment treaties.

Investor-State Dispute Mechanism

The attempt by our Government to portray the ISDS process in the CETA as different in any fundamental way to other ISDS provisions is cynical and dishonest. As mentioned previously the ISDS provisions in the CETA are in some ways even more business-friendly than those in other agreements.

ISDS provisions have been used in Canada, and world-wide, to challenge and obstruct a range of environmental protection measures. In addition, they are used to frustrate governments wishing to bring local benefits (jobs and local sourcing requirements) as a condition of investment.

In Prince Edward Island policies aimed at protecting our water supply, policies protecting our coastal and environmentally sensitive areas, moratoriums on fracking or drilling for oil in Island waters could all be targets for challenges from European companies.

In addition, attempts to receive benefits for Islanders from investors using our resources could be challenged. When the government of Newfoundland and Labrador required that Exxon Mobil make certain investments in Research and Development in the province in return for offshore drilling rights, Exxon sued Canada pursuant to investor-state provisions in NAFTA and won.

Many Islanders are involved in one way or another in solidarity work with less-developed countries. We are therefore aware of the impact which ISDS provisions can have in hampering the ability of local populations in developing countries to protect their water supply from the negative impacts of Canadian mining projects.

On April 25th 2016, 180 Latin American and international organizations (from Mexico to Argentina) sent a letter to Prime Minister Trudeau asking for changes to Canada's foreign and trade policy regarding the mining sector. Two of the five main demands refer to trade agreements and their role in weakening public interest legislation aimed at protecting workers and the environment. They asked for: "A halt to the pursuit of free trade and investment agreements that favour Canadian mining companies over people and the environment, in particular an end to investor-state international arbitration mechanisms, which foreign investors use to protect their investments and evade regulation or accountability for abuses."

CETA will give the same rights to Canadian companies to challenge attempts of less-developed countries of the EU to regulate to protect their water supply and their environment.¹

Wind Energy Policy

Prince Edward Island has shown some good sense in the past by linking the necessary transition to a low-carbon future with the creation of clean energy jobs. The provincial government's *Ten Point Plan* for the development of wind energy states that: "Evaluation criteria will favour development proposals that maximize economic benefits to Prince Edward Island – through both construction and ongoing operations". The government committed to a policy which would "create an environment where developers will have the incentive to develop projects in a way that offers the greatest benefits to landowners, businesses and our Island community as a whole."

This policy establishes that developers who can promise spin-offs such as local sourcing and local jobs will be given preference. It is a policy that makes sense. Wind is a public resource and it is reasonable and fair that in return for allowing a European company to exploit it for profit we receive some economic benefits. Island taxpayers pay for all kinds of infrastructure that benefits developers.

Such policies will be prohibited under the CETA. The agreement protects investors from any kind of obligation to provide benefits to the community whose resources they are exploiting.

¹ Canada already has a bilateral trade agreement with Romania. Gabriel Resources, a Canadian mining company, has sued Romania for a reported \$4 billion dollars because the government cancelled its proposed open-pit gold mine project due to widespread popular opposition.

We should expect that the European multinational company, GDF Suez Energy, which is already invested in wind energy on Prince Edward Island, will vigorously enforce its new rights under the CETA to invest, free of any obligation to directly benefit Islanders.

Public Transit

In 2008, an ENTRA Consultants study confirmed that, with proper support, a province-wide public transit service in Prince Edward Island was feasible. It would produce benefits for employers and workers, seniors, students, persons with disabilities and low income individuals and families, as well as for taxpayers and travelers more generally. It would help maintain our rural communities and benefit the environment. However, if the CETA is implemented, the Prince Edward Island Public Transit Coalition fears those potential benefits may never be realized.

There is neither a federal nor a provincial Annex 2 reservation for inter-city public transit in CETA.² This means that PEI will never be able to have a publically run inter-city transit system despite popular support for such a policy. It also means that we will never be able to regulate private operators through “public convenience tests”. They will have a right to cherry-pick routes meaning that more remote communities such as Tignish and Souris are very unlikely to ever get a bus service.

Last fall Dr. Catherine Potvin, Canada Research Chair on Climate Change Mitigation and Tropical Forests: Science for Empowerment spoke at a forum sponsored by UPEI’s Institute of Island Studies about Island resiliency in the face of climate change. In prescribing strategies for Prince Edward Island she stressed the need for an Island public transit system.

This is an example of an important climate change mitigation strategy which is blocked by modern-day trade rules.

Local Food

In Prince Edward Island, as elsewhere in Canada, interest in locally produced food is at an all-time high. Farmers’ markets and community supported agriculture initiatives (CSA) have grown in popularity, as has the demand for local food in grocery stores and restaurants. The PEI Government, which plans to introduce a Local Food Act in 2017, announced in April that it is investing in a pilot project in schools to increase the amount of fresh, local food offered in three Island schools.

Provincial procurement policies, which would require provincially funded schools, post-secondary institutions, hospitals and nursing homes to buy local food, are important contributors to a healthy food system, with benefits shared between producers and consumers. Farmers and fishers are provided with

² CETA will also have a chilling effect on municipalities considering creating new or expanding existing public services or utilities in any area which is not covered by an Annex 2 reservation. This includes water supply facilities, waste water treatment facilities and services, electrical transmission and distribution and environmental services. Investors will have the right to sue against a municipal decision to bring such services into the public domain.

an important, dependable market for their products, and consumers have access to fresh, nutritious food. There is a positive environmental impact due to decreased reliance on the fossil fuels required to transport food over long distances.

However, some provisions contained in the CETA would restrict such policies from being implemented. Until now, such restrictions have been excluded from trade agreements. But under CETA, municipal and provincial governments as well as the MASH sector would not be permitted to give preference to goods or services from local suppliers in excess of a certain threshold.

After he was elected, the Prime Minister of Canada instructed Minister of Agriculture Lawrence MacAulay to work with other federal departments to develop a national food policy. Local procurement must be part of that policy and part of the vision for a healthy, sustainable food system.

Environmental Impacts of Industrial Agriculture

In Prince Edward Island one of the main beneficiaries of the CETA will be the potato industry, largely controlled by one corporation, with the capacity to supply the quantities of product required by an expanded export market. Placing a priority on production for the export market favours an industrial model of agriculture, treats food as a commodity and diverts land and resources away from small-scale farms that use agro-ecological or sustainable methods.

In PEI, industrial agriculture has already had a profound effect on our environment. Meeting the demands of the export market requires monoculture of potatoes and large inputs of synthetic fertilizers and pesticides. All of these factors have contributed to serious environmental problems, including soil depletion, elevated nitrates levels in drinking water, anoxic estuaries, fish kills and sedimentation of waterways. Not only does the CETA favour the potato industry due to tariff reductions on frozen french-fries, it could actually help it to expand and add to the environmental damage that is already being done.

According to researchers at UPEI and with the PEI Department of the Environment, “Excessive nitrate loads from intensive potato production have been linked to the reoccurring anoxic events in many estuaries in Prince Edward Island.” “Excessive nitrogen (N) losses from anthropogenic activity contribute to eutrophication and impairment of estuarine ecosystems world-wide.” (NRC, 2000; Voss et al., 2011; Ahtiainen et al., 2014)

Anoxia happens when excessive amounts of Nitrogen enter the water table, and eventually streams, rivers and estuaries, resulting in massive growth of algae, which decompose and consume all of the oxygen, depriving all remaining organisms. According to PEI’s Department of Lands, Communities and the Environment, **19 estuaries became anoxic at least once in 2016. Between 2005 and 2015, 41**

estuaries were affected by anoxia. Researchers at UPEI have found that most of the Nitrate pollution in the Northumberland Strait is attributable to PEI farms. **“It turns out that 95% of the nitrates that are emptying into the Northumberland Strait are coming from this province. And of these, 91 per cent are coming from the Island's agriculture industry.”**

Also according to the Department’s website, between 1964 and 2011 there were 50 fish kills in PEI watersheds. In PEI, fish kills happen when sudden or extreme rainfalls wash pesticides that have been recently applied to farmland into streams and rivers. Following a particularly disastrous fish kill in 2013, the PEI government convened a committee to study the issue. The Action Committee found that, **“on balance of probabilities, the cause of the fish kills in 2002, 2005, 2011 and 2012 was the runoff of water and soil contaminated with pesticides from agricultural fields in potato production during and immediately following heavy rainfall events”**. Source: Report of the Action Committee for Sustainable Land Management http://www.gov.pe.ca/photos/original/elj_suslndmngt.pdf

Health Care and Drug Costs

Trade agreements prohibit the reversal of a privatization. Although there is a reservation for Canadian health care in CETA, it is limited. There are many gaps in the medicare system and ongoing discussions about expanding the program to include services such as home care and pharmacare. However, once a foreign company becomes involved in a health care service it is protected by the CETA and bringing that service into the national medicare program becomes very difficult. Canada should expect investor state challenges. For example, any attempts to introduce a pharmacare program would likely be met by challenges from foreign insurance companies. The CETA will expand the range of companies which will be able to launch such a suit.

CETA will commit Canada to:

- create a new system of patent term extension that will delay the entry of generic medicines by up to two years;
- lock in Canada’s current terms of data protection, making it difficult or impossible for future governments to reverse them; and
- implement a new right of appeal under the patent linkage system that will create further delays for the entry of generics.

The resulting increased cost to Islanders has been estimated at \$3.6 to \$6 million annually. The PEI Healthcare system is already stretched. Recent attempts to make money-saving cuts to dialysis by stopping rural delivery created a back lash and Islanders fought to have the service reinstated. Further increases in drug costs could put enormous pressure on other important services, nurses’ salaries and the preservation of rural emergency services. The cost of health insurance will also likely rise.

The argument that brand-name manufacturers need the extra patent protection to attract Research and Development dollars has not borne up to the test of time. After patent protection was extended as a

result of the NAFTA, brand-name manufacturers pledged to invest 10% of their sales in Research and Development and since 1997 have consistently failed to meet this commitment.

Dairy Industry

Around the world, dairy production and processing are almost exclusively a domestic industry. The markets have evolved this way historically due to the freshness cycle of milk. In Canada, we have developed a system of matching production to the domestic Canadian market requirements. Through a cooperative relationship between government, producers and processors, we are able to supply a consistent, stable supply of quality milk to processors across the country to be processed into Canadian dairy products. Supply management limits expensive over-production in the system, ensures fair prices to PEI farmers and enables good processing jobs nation-wide.

World dairy markets are essentially a dumping ground for dairy products produced in excess of a domestic market. Prices are very volatile and well below milk production costs. The cost of production between EU Nordic countries and Canada are very similar.

Prince Edward Island dairy farmers invest over \$1 million dollars per year in new product development, market growth and promotion. As a result of this effort, combined with similar investments by dairy farmers from across Canada, the fine cheese market has been growing in Canada between 0.5% and 1% annually. CETA gives access to an extra 17,600 tonnes of the fine cheese market to the EU; European negotiators had only asked for 12,000 tonnes. This pushes the total cheese import market share to 9%. Canada's access to the EU cheese market is only 1%. The CETA announcement effectively gives the Europeans 60% of the premium fine cheese market and subsequent market growth too

Dairy Farmers of Canada estimates the annual revenue loss for Canada due to CETA to be \$150 million. PEI's share of this would be roughly \$2.5 million. On-farm milk production is projected to decline 2.2% with the loss of the market. Island milk processor, Amalgamated Dairies Ltd. (ADL), could suffer unintended consequences if EU companies scale back or discontinue processing relationships they currently have with ADL as a result of the changes announced

Government Procurement

CETA is the first trade agreement which prohibits Islanders from choosing to use local procurement as a tool for local economic development. These restrictions which become more iron clad as trade agreement layers upon trade agreement are profoundly undemocratic. The neo-liberal mantra that only open markets and global competition are good for us and our economies is an assertion increasingly contradicted by empirical data.³

³ See Dani Goldrick page 3

Although we are a small province there are a significant number of government and MASH sector contracts which exceed the CETA thresholds and will have to be tendered in Europe. These include food purchasing, office and paper supplies and computers. There are also frequent provincial government construction contracts valued at \$8 million or more. The public Plan B highway project cost \$17 million and the Souris High School exceeded \$24 million dollars.

The Fishery and Processing Jobs

Owner-operator and fleet separation policies are the backbone of the Island fishery, based on geographical proximity, history and tradition. They are in stark violation of normal trade liberalization rules. It is hard to imagine that they will not become targets in future trade treaty negotiations if Canada continues on its blinkered mission to pursue further neo-liberal trade agreements.

The quantity of lobster exported to Europe may well increase due to the elimination of tariffs on fresh and frozen lobster. Whether this will result in better prices at the wharf for Prince Edward Island lobster fishers is a very different question. As the past few seasons have illustrated, the price that fishers fetch for their lobster does not necessarily respond to the rules of supply and demand. When the catch goes down due to cold waters, the price does not go up. When there is a shortage of workers in processing plants, their wages do not increase. On PEI the lobster market is far from a free market. Hence, an increase in demand from Europe may, or may not, be reflected in the price at the wharf. The problems with the fishery go far beyond a lack of demand for the product.

Because of this, it is particularly troublesome that our government agreed to trade away the right to implement **mandatory minimum processing requirements**. PEI does not currently implement mandatory processing requirements. However, in different market conditions this could be a very important policy option for creating jobs for Islanders. Who knows what the state of the lobster market will be in twenty years?

The Prince Edward Island government, by agreeing to these terms in the CETA, is abandoning its responsibility to ensure that it will always have the tools available to ensure that the local and inshore fishery can always be appropriately regulated in order to provide maximum benefit and jobs in our local communities.