

April 23, 2012

City of Hamilton
Hamilton City Hall
71 Main Street West
Hamilton, ON L8P 4Y5

Dear Mayor and Councillors,

On behalf of the 618,000 CUPE members in Canada, I am writing to thank-you for raising your concerns about the Comprehensive Economic and Trade Agreement (CETA) that is currently being negotiated between the European Union and Canada.

More than 50 municipal governments across the country have now passed resolutions calling for greater transparency by the federal and provincial governments around this far reaching trade, investment and labour mobility agreement.

This month, the House of Commons Standing Committee on International Trade concluded its study of the CETA negotiations and presented a report to the House of Commons. The dissenting opinions filed by NDP and Liberal MPs on that Committee support your call for greater transparency as well as raising other issues. These dissenting opinions are attached here for your information.

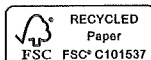
CUPE is one of many civil society organizations with significant concerns about the impact of CETA on municipal governments.

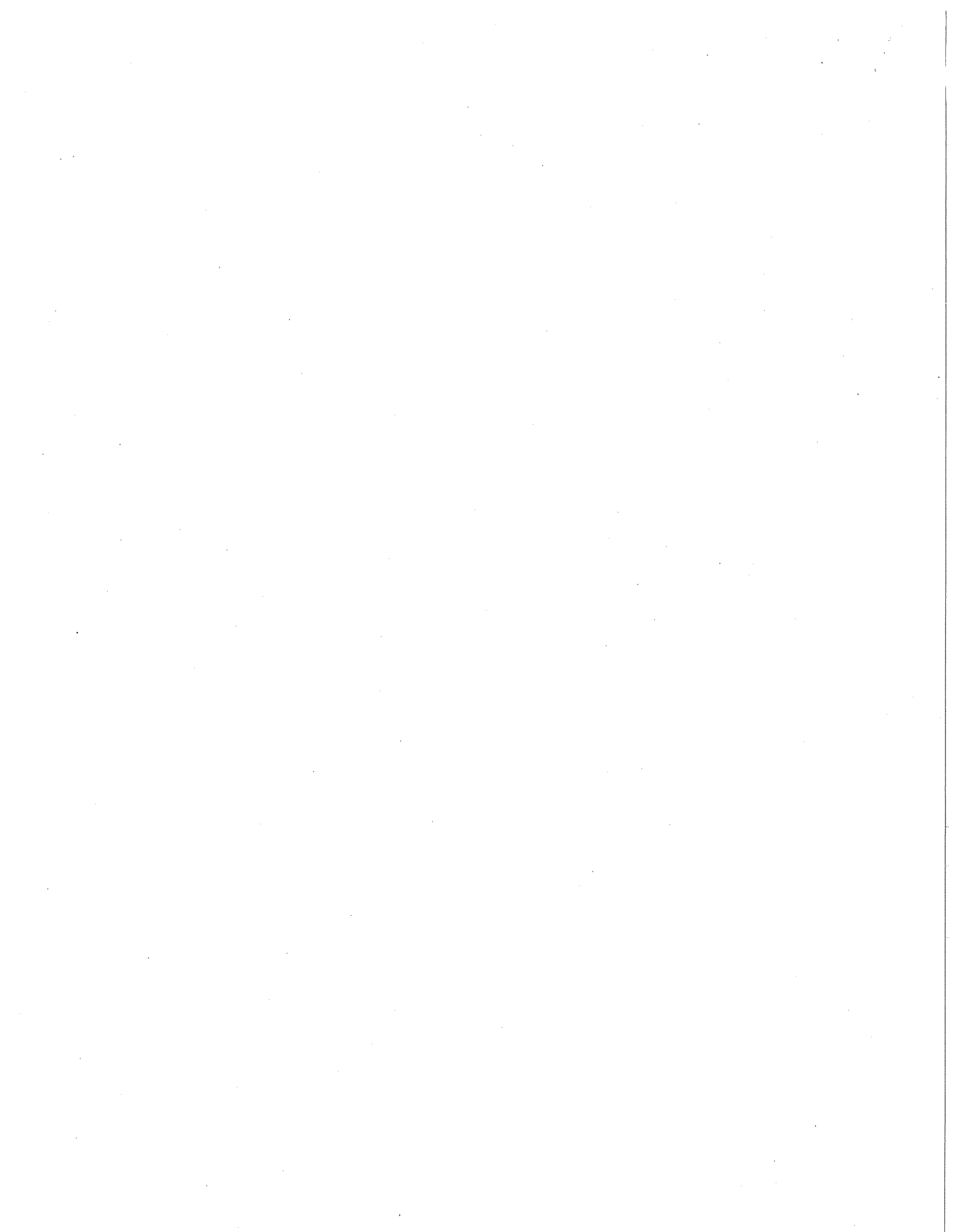
Let me highlight our key concerns here.

Canadian municipalities stand to lose their longstanding ability to use the procurement of goods and services to maximize benefits to the local economy or support policy goals such as environmental protection and local job creation. CUPE does not accept the rationale that the gain will be lower prices with competition from EU companies; the lowest price is not always the best deal for local businesses or communities.

Further, the investor-state dispute settlement mechanism used in NAFTA has proven to be an expensive way to deal with complaints by foreign investors against Canadian government policies. Let's not repeat this mistake in CETA. Democratically elected municipal governments making prudent and transparent policy decisions should not be held more accountable to foreign corporations and private tribunals than to their own citizens and domestic courts.

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Canadians learned from NAFTA that public services like water services and transportation require broad and clear reservations in trade agreements to protect them from privatization now or in the future. CUPE has a long-standing interest in protecting public services. CETA and other new trade agreements like it threaten the integrity of our public services by limiting the ability of governments to expand public services or return privatized sectors to the public sector without fearing claims for compensation by foreign corporations.

The EU demand to increase patent protection and delay the availability of generic drugs will increase Canadian pharmaceutical costs by \$2.8 billion per year. This adds considerable and continuing costs to municipal employee benefit plans.

CUPE is urging federal, provincial and territorial governments to engage in meaningful public consultations on CETA to enable citizens and communities to be fully informed and register their views.

On behalf of CUPE, once again, thank-you for raising your concerns.

Sincerely,

A handwritten signature in cursive script that reads "Paul Moist".

PAUL MOIST
National President

Att.

cc: C. Fleury; S. Marshall

mf/cope491

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HOUSE OF COMMONS
CANADA

**NEGOTIATIONS TOWARD A COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT (CETA)
BETWEEN CANADA AND THE EUROPEAN UNION**

**Report of the Standing Committee on
International Trade**

**Hon. Rob Merrifield, P.C., M.P.
Chair**

MARCH 2012

41st PARLIAMENT, 1st SESSION

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NDP Dissenting Report for CIIT - CETA Study

The NDP thanks the Committee and witnesses for the time put into this important subject. International trade is crucial to sustaining Canada's economic growth and prosperity, and increasing trade with the European Community is an important goal. While the NDP is supportive of efforts to lift tariffs, and diversify our export markets, boosting Canada's trade performance will require more than just free trade agreements. Our success will require a strategic plan for public investment and support of key value-added industrial sectors to help back Canadian global winners, which we are pleased to see as a recommendation from the committee.

At the same time, it is clear that trade and investment agreements, such as the Canada-EU Comprehensive Economic and Trade Agreement (CETA), are about far more than just international trade. Such treaties affect public regulation of investment, services, intellectual property, public purchasing and other matters only peripherally related to trade. The details and terms of the agreement matter and must be scrutinized to weigh costs and benefits. We do not support concluding the deal as currently framed in the time period recommended by the majority on the Committee.

Transparency is essential. The NDP objects to the lack of transparency in the current negotiation process. Closed-door meetings have created a climate of secrecy in the CETA process. Too little public information exists for Canadians and their elected representatives, at all levels of government, to reach informed conclusions on the merits and risks of CETA. It is only through a meaningful consultation process, which engages all stakeholders, that we will craft trade agreements that benefit all Canadians. Even this Parliamentary Committee study did not allow full participation for interested stakeholders, including many submitted by the NDP.

The treatment of **public services** in free trade agreements is controversial. Too often, treaty protections for sensitive sectors such as health care, education, social services and municipally provided services including water treatment and delivery or public transit leave the door open to trade and investment challenges. Public contracts for these and other services are a principal point of interest for the EU in the CETA negotiations. Canada must seek a clear exclusion for public services broadly understood as well as protection for future policy flexibility at all levels of government.

For health care, there is particular concern from experts and citizens groups that the government is stepping back even from the protections it built into the NAFTA. A strong exclusion for healthcare is needed, as well as a commitment to avoid inflating the costs of medicine, which are the fastest-rising component of Canadian health care costs.

CETA would be the first Canadian bilateral FTA since NAFTA to have an **intellectual property rights** (IPR) chapter, going well beyond Canada's existing obligations. EU demands include adding the extra time it takes for a drug to receive regulatory approval (up to 5 years) to the regular 20-year term of patent protection, longer terms for data

protection (from 8 to 10 years), and new rights of appeal that could delay the approval of generic drugs. Such changes would reduce the availability of medicines, and drive up drug costs, which could deal a critical blow to the sustainability of our health care system. A recent study estimates these extra costs at \$2.8 billion annually.

Since IPR provisions are so rare in Canadian bilateral trade agreements and European negotiators have placed such great weight on these provisions, we should scrutinize the implications carefully. Further study is needed to consider the implications of harmonizing our IPR system with the EU in all relevant sectors and to determine the costs or benefits that will be witnessed by Canadian consumers and producers.

The NDP also has significant concerns about the CETA's impact on **government procurement at the sub-federal level**. From available information, the proposed rules would prevent governments from considering, in covered sectors, any 'condition' that encourages local development in procurement contracts or bids, even if the process is non discriminatory to foreign bidders. Restricting government procurement in this way deprives provincial and municipal governments of crucial economic levers, particularly during economic downturns, to use government purchasing to stimulate the economy and encourage local spinoffs.

The NDP supports the need for open and fair government tendering practices, but this does not require sacrificing the ability for governments to use procurement to serve local economic objectives. Municipalities including Toronto, the Union of British Columbia Municipalities (representing 150 municipalities) and over twenty others across the country, have been raising red flags about the back room CETA trade talks. These municipalities have asked their provincial and federal governments to ensure their existing rights are protected under any new trade agreement and that they be excluded from the CETA. Their concerns must be heard and addressed.

As noted in the Committee's report, participation of the provinces in the negotiations makes the process more complex. The objective to bind sub federal levels of government in the CETA on a range of issues from procurement to services raises important questions of constitutional authority, particularly in relation to enforcement of the agreement and financial liability. Further study is warranted.

The NDP welcomes any opportunities for real export growth for Canadian agricultural sectors, while noting continued European resistance at various levels. We also remain concerned about continued pressures to open Canada's **supply managed sectors**, which must be protected.

The CETA also needs to account for the highly integrated nature of North American production and the NDP appreciates the acknowledgement of this issue in the committee's report. Provisions regarding **rules of origin** must be sufficiently broad to ensure the vast majority of Canadian exports are not subject to tariffs. The automotive industry is of particular concern given the high degree of cross-border production and the potential sensitivity of production decisions to various rules of origin thresholds.

Finally, the NDP views **investor-state provisions** as an inequitable element in trade agreements that privilege corporations in a way that conflicts with the public interest. Investor-state arbitration allows foreign investors to bypass domestic court systems. Arbitration tribunals, which lack accountability, can order governments to compensate investors allegedly harmed by public policies or regulations. Both Canada and Europe have highly regarded court systems that protect the rights of all investors regardless of nationality. The NDP opposes including investor-state arbitration in the CETA and recommends that Canada follow the lead of Australia in rejecting investor-state arbitration in future trade and investment agreements.

In conclusion, the NDP urges a re-think of Canada's approach to expanding trade with Europe, and consideration of means for enhancing mutual economic prosperity in a way that contributes to a greener economy, and bolsters high quality jobs and labour rights, while respecting democratic decision making regarding public services, public regulation, local government procurement and the public interest.

Recommendations

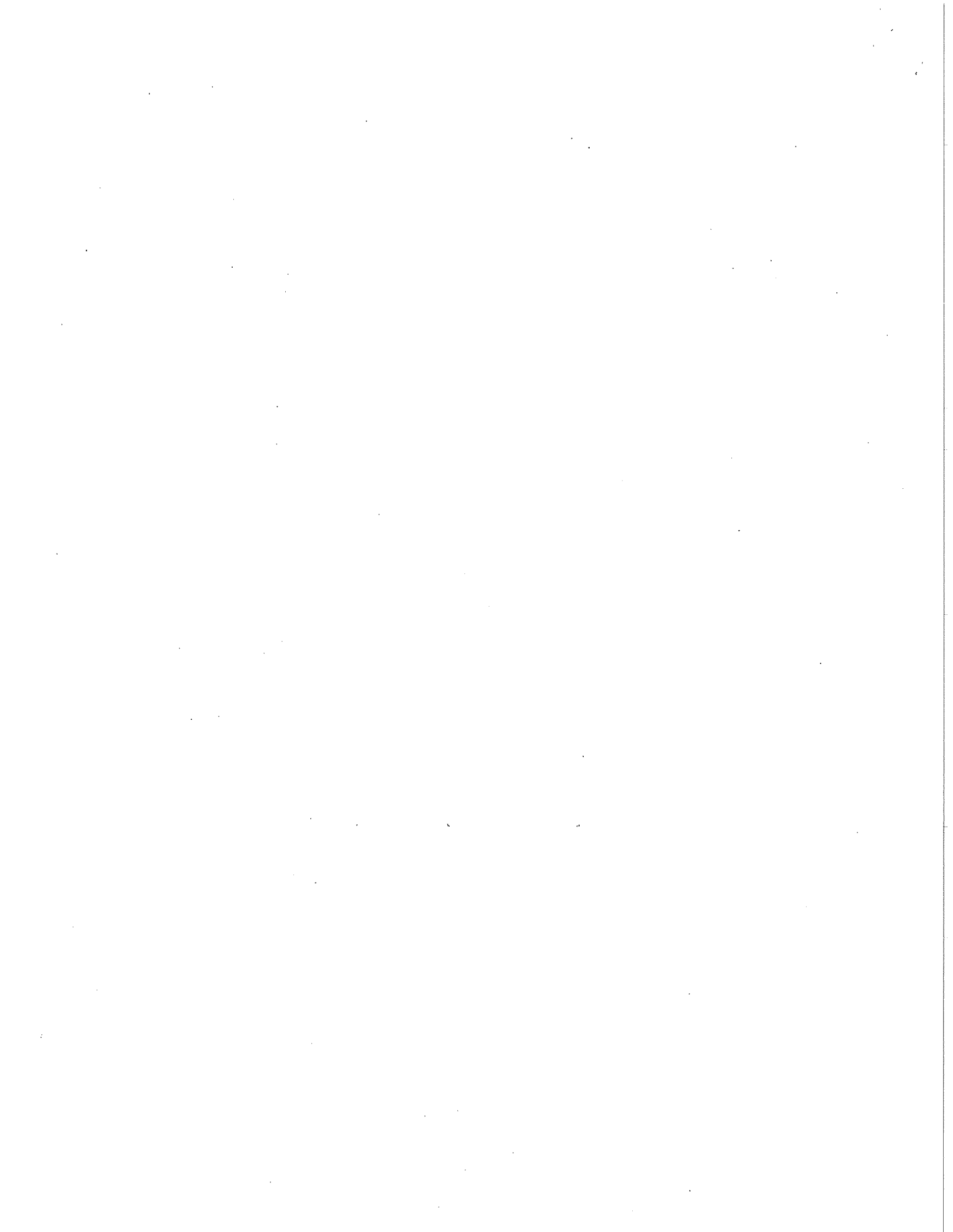
1. **The Government should publicly disclose the negotiating text and Canada's offers (federal, provincial, territorial) before the text of the treaty is finalized.**
2. **The Government should ensure full consultation with municipal governments in Canada regarding CETA offers and negotiations, and modify its time frame for the negotiations to enable this participation.**
3. **The Government should ensure that the final text does not include investor-state arbitration provisions.**
4. **The Government should ensure that the final text does not include any changes to patent protection that would decrease the availability of generic drugs or increase drug costs.**
5. **The Government should ensure that the final text exempts provincial, territorial and municipal government procurement.**
6. **The Government should ensure that municipal drinking water and waste water services are explicitly included in its Annex II reservations.**
7. **The Government should seek a clear and broad exclusion for public services including protection for future policy flexibility at all levels of government to expand public services or return privatized sectors to the public sector without threat of litigation.**

8. The Government should negotiate a new exemption for health care stipulating that nothing in the CETA shall be construed to apply to measures of a signing party regarding health care or insurance.
9. The Government should ensure a broad cultural exemption in CETA that would exclude books, magazines, newspapers, publishing, broadcasting, film, video, performing arts and other aspects of cultural industries.
10. The Government should exclude over-access tariffs on supply-managed products from tariff reduction, and re-affirm that producers and their elected representatives will maintain the unfettered ability to collectively manage domestic supply for egg, poultry, and dairy products.
11. The Government should effectively safeguard the capacity to institute or re-institute a single desk for grain marketing, in any geographic region, should a majority of farmers' elected representatives decide to do so.
12. The Government should develop an industrial strategy for Canada that partners with industry to identify competitive high-productivity sectors that can be developed into high-value export champions, as well as current export sectors in Canada that may need support to remain competitive with the European Union (including forestry, auto, etc.). This could include leveraging procurement, providing R&D support through direct grants, and improving both physical and knowledge infrastructure.
13. The Government must retain the ability to implement federal financial incentives and ensure community benefits in the development of clean power, including solar, wind, and water. Canada must develop innovative green energy technologies that will help us meet domestic needs and access a growing global market.
14. The Government should commission an independent study of the CETA whose specific terms of reference would be to determine the true cost of harmonizing Canada's intellectual property system with that of the European Union.
15. The Government of Canada should insist that the CETA agreement establish a framework for ensuring market access, and continued production, for Canadian producers of comparable agricultural and food products that use designations protected under the EU's Geographic Indications regime .

16. That the Government of Canada undertake a study to review where the CETA addresses areas of provincial jurisdiction as it related to the distribution of powers:

- in particular with respect to section 92 of *The Constitution Act, 1867*; and
- in all areas where there is shared, overlapping, or concurrent jurisdiction, and report on key implementation and enforcement issues that could arise.

17. That Government should ensure that CETA's provisions related to rules of origin are broad enough to ensure meaningful market access gains for Canadian exports, particularly auto, fish and agricultural products, recognizing the reality of highly integrated North American supply chains. With Specific reference to the Canadian automotive sector, the CETA must specify low rules of origin thresholds for Canadian manufactured automobiles.



LIBERAL PARTY

DISSENTING OPINION REPORT CETA NEGOTIATIONS

Introduction

The negotiations of the Canada – European Trade Agreement (CETA) are in their final phases and the precise issues which are on the table and specifically what issues have been settled upon in negotiations remains unclear.

The report of the committee made direct reference to the scale of the CETA agreement stating that the committee was “told of all trade negotiations entered into by Canada, including the NAFTA, the Canada-EU CETA negotiations are more likely to have a greater impact on Canada.”

That being said it is the concern of the Liberal Party that the committee has been deficient in conducting its hearings into the CETA. This conclusion has been reached on the basis that the committee examining the Canada – U.S. FTA in 1987 met with 147 witnesses and did so traveling the country. A similar course of action was taken by the committee in examining the NAFTA proposal in 1992-93 hearing from 124 witnesses and again traveling the country. The committee on CETA heard from 28 witnesses and never left Ottawa.

Recommendation 1:

Given the scale of the agreement being negotiated with the European Union, the committee should:

- A) Re-title the report as an Interim Report;**
- B) Commit to holding further hearings in the spring of 2012 on the negotiations with a commitment to travel across Canada to hear from Canadians and to invite provincial governments to make submissions and presentations to the committee.**

Deficiency of the background analysis of the CETA:

The basis for the government's case on CETA is a projection of possible benefits. In his testimony before the committee Don Stephenson, ADM Trade Policy and negotiations for DFAIT told the committee that with respect to the analysis prepared prior to the commencement of negotiations on a Canada – India trade agreement that, “I want to make the point these are theoretical econometric studies. They are projections... I'd like to say that these are absolutely accurate assessments and predictions, but they can't be.” (September 29, 2011, p. 8). During the course of a later hearing of the committee, Mr. Stephenson repeated this observation, stating, “The joint study is just an economic modelling exercise.” (International Trade committee, December 1, 2011, p. 10)

The Minister of International Trade confirmed that sectoral analyses have been conducted by the federal government during the course of negotiations but refused to provide them to the committee.

Recommendation 2:

That the government must clearly indicate not only the "benefits" from the trade agreement being sought but the "costs" which could result from any agreement being sought and identify them by sector. The assessments referred to by the Minister of International Trade should be shared with the International Trade committee in order for the committee to have a far better assessment of the impacts of the negotiations.

Legal implications of an agreement with respect to provincial/municipal governments

The committee report states that "the federal government is fully responsible for the implementation and application of international treaties."

However, what has become evident is that neither the provinces, nor municipalities can apparently be held responsible or challenged directly by the EU for reneging on elements of the agreement.

Recommendation 3:

Prior to the conclusion of the negotiations, the federal government should table with the committee a legal opinion clarifying the issue of responsibility under any agreement reached with the EU, outlining specifically the terms as to which level of government will bear responsibility for any dispute resolution finding against any province or municipality.

The issue of the consequences of the CETA on municipalities and the issue of procurement is important to note.

The committee has an obligation to call upon the government to clarify situation with respect to procurement which even the Federation of Canadian Municipalities told the committee is far from clear in terms of the impact the procurement provisions may have on municipalities and provinces in terms of any ability to tender contracts locally.

Intellectual property concerns – pharmaceutical costs:

In testimony before the committee the representatives of the generic pharmaceutical industry stated categorically that the impact on Canadians from the CETA as currently known will result in considerable cost increases in the range of an additional \$2.8 billion annually in drug costs.

While representatives of the major pharmaceutical companies challenged this position, it was of concern that the federal government has provided no third party analysis with respect to the entire issue.

Recommendation 4:

Prior to the submission of any agreement the government of Canada table an analysis with respect to the impact on pharmaceutical drug costs due to any implications arising from intellectual property changes.

Importance of the U.S. market – the need to keep new trade agreements in perspective:

During the course of the committee hearings, the extent of our reliance upon the US market was emphasized. "The trade department's own analysis shows that where the United States market accounted for 74.9% of Canadian merchandise exports in 2010, by 2040 the U.S. share of Canadian exports is expected to be 75.5%." (October 6, 2011, p.5). Thus, according to the government's own estimates only 25% of our merchandise trade will be dedicated to the rest of the world.

Given this fact, it is critical that the Conservative government keep this reality at the forefront of its trade policy agenda, something which unfortunately, it is failing to do.

Recommendation 5:

That the committee conduct a series of hearings and table a report to Parliament on the status of current Canada – US trade issues with a focus on the future relationship with that market in the context of agreements such as the Canada – EU trade agreement.

Status of supply management in negotiations

The fate of our supply management system remains very much in question as a consequence of the CETA negotiations.

In testimony by Mr. Steve Verhuel, Canada's chief negotiator at the talks on October 6th he confirmed in response to a direct question related to supply management that all issues were on the table and that as of that date, in so far as dairy specifically was concerned, there had not been any "in-depth" discussions to that point. (International Trade committee, October 6, 2011, p. 12)

What neither the Minister of International Trade, nor our chief negotiator would confirm was whether the issues of tariff reductions or increased access were being negotiated:

Recommendation 6:

That the committee call upon the government to specifically state the position taken at the negotiations with respect to supply management – not only whether the entire system is on the negotiating table but is the government prepared to concede on issues related to increased access by the EU, and whether specific tariff issues have been discussed with a view to reducing those tariffs on any or all supply managed commodities.

Regulatory implications

When Minister Fast appeared before the committee he stated:

“We’ve committed to preserving government powers and abilities to regulate. Canadian products, services and commercial expertise are not for sale. Our government’s powers and ability to regulate are not. October 6, 2011, p. 2)

Although the document was only referenced in testimony, the March 2011 Sustainability Impact Assessment prepared for the European Commission stated that the agreement, “will clearly reduce regulatory flexibility in Canada, some of which will also constitute reductions in economic and social, and potentially environmental policy space of the type relevant to this sustainability impact assessment.”

Recommendation 7:

(A) That the committee call for a full analysis be provided on the extent and impact of the procurement elements contained in the CETA prior to any submission by the government of the agreement for ratification by Parliament.

(B) That the Minister report to the committee on the foregoing.

The matter of investor protection and the implications on government policy must be carefully considered

In response to questions raised regarding the issue of investment protection, Canada’s chief negotiator stated, “We actually haven’t made a lot progress in that particular area because on the EU side they only recently gained a mandate from member states to negotiate in this area of investment protection.... The EU does come from a different perspective than we do—in some ways—on investment protection...” (October 6, 2011, p. 7)

What should be of concern is the evidence provided to the committee by Scott Sinclair:

“Investor rights agreements, such as the NAFTA chapter 11, go well beyond fair treatment. They grant special rights to foreign investors that

enable them to bypass domestic court systems. Early in the CETA negotiations, Canada put the NAFTA chapter 11 template on the table. The EU has now responded, quite recently in fact, and under pressure from some of the member states has been demanding an agreement with even stronger investment protections than the NAFTA in certain respects. It is also insisting that provinces and municipalities fully comply. Under the NAFTA's most-favoured-nation rules, any concessions made to European investors in the CETA are automatically extended to U.S. and Mexican investors." (November 17, 2011, p. 10)

Recommendation 8:

That the committee call upon the government to provide clarification to the committee regarding the status of negotiations or any final agreement concerning investor protection issues prior to submission of any final agreement to Parliament for ratification.

Conclusion

The Minister of International Trade told the committee that the CETA negotiations were the "most significant trade talks since NAFTA." (October 6, 2011, p. 1)

The brevity with which this committee has dealt with this agreement should be of concern to anyone interested in let alone concerned about the CETA.

The strategic agenda which propels this government's trade agenda remains unclear which has resulted in the apparent willingness to negotiate and reach Free Trade Agreements for the sake of achieving an agreement. This is a matter of serious concern.

OFFICE OF THE CITY CLERK

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ACTION.....