



HAMILTON CHAPTER

THE HAMILTON CHAPTER OF THE COUNCIL OF CANADIANS

PRESENTATION TO HAMILTON CITY COUNCIL

January 18, 2017

Introduction to CoC (1)

- Founded in 1985, the Council of Canadians is Canada's leading non-partisan, social action organization, mobilizing a network of grassroots chapters across the country. The Hamilton Chapter is one of the 60 active CoC chapters.
- Through our campaigns we advocate for clean water, fair trade, green energy, public health care, and a vibrant democracy. We educate and empower people to hold our governments and corporations accountable.
- The Council of Canadians is a registered non-profit organization and does not accept money from corporations or governments. Our work is sustained by volunteer energy and individual donations

General Comments

- **Support for fair trade**
 - The Council of Canadians believes trade agreements should be made by and for people, not corporations. We campaign to make trade deals fair, and trade policy open and democratic.(2)
- **Opposition to the Trans-Pacific Partnership (3)**
 - The TPP is a US-driven and dominated initiative, designed to bolster that country's corporate and strategic ambitions (p.9)
 - TPP negotiations began in 2008 (p.9) Canada and Mexico were admitted in 2012 (p.10)
 - TPP is about far more than trade (p.12); it is about non-tariff barriers and government regulations
 - Canada already has tariff-free access to most of the TPP region (p. 11)
 - Our concerns about the TPP include: the lack of proven economic and employment benefits to Canada; changes to intellectual property regulations; the threat of increased cost of medications; the expansion of

the temporary entry system for migrant workers; and, restrictions on the activities of postal services and state-owned enterprises (p.18).

Specific Concerns

- The specific concerns I want to focus on are the **Investor State Dispute Settlement provisions (ISDS) and the environment**
- Investor State Dispute Settlement (ISDS) – gives foreign investors the right to seek compensation (sue for damages) when they believe government laws , regulations and other decisions have interfered with their private interests, in particular their expected future profits (3)
- Canada is party to a growing number of trade agreements containing investor state dispute settlement mechanisms; the trend began with NAFTA and continued with the Comprehensive Economic Trade Agreement (CETA) and the Trans-Pacific Partnership Agreement (TPP) (4)
- NAFTA lawsuits have challenged a broad range of laws, regulations and policies, including measures related to public health, environmental protection and resource management (3)
- Canada is the most sued developed country in the world (3)
- So far, 38 NAFTA lawsuits have been filed against Canada by American corporations, the majority involving environmental rules or natural resources
- For example, Lone Pine Resources is seeking \$250 million because Quebec created a moratorium on fracking for oil and gas under the St. Lawrence River (4, 6)
- Closer to home, an arbitral tribunal appointed under the NAFTA found that the Government of Ontario treated Windstream Energy LLC's (Windstream) investments in Canada unfairly and inequitable under NAFTA after it placed a moratorium on offshore wind farms in 2011. The tribunal awarded Windstream damages of \$25,182,900 and \$2,912,432 in legal costs (5, 6)
- Treaties such as NAFTA, CETA and TPP give foreign investors benefits not available to them in domestic and international law (7)
- The ISDS arbitration tribunals are outside and separate from domestic and international courts; " foreign investors directly control or influence half of the arbitration tribunal's membership...normally judges would be appointed by a public body as part of a publicly accountable process... Due to the absence of conventional safeguards of judicial independence, a range of conflicts of interest arises in the system, typically favouring deep-pocketed potential claimants, i.e. multinational companies and very wealthy individuals" (7, p. 134-135)
- "Foreign investors can be awarded uncapped amounts of compensation as the primary remedy for sovereign conduct that is deemed by the arbitrators to have been unlawful. This is an extraordinary powerful and highly unusual aspect of the treaties. It can create major challenges for legislatures and governments attempting to plan for the cost of their decisions" (7, p. 133) This contributes to

what many have called the “chill effect” of the ISDS mechanism. Governments are reluctant to make decisions in the interest of their citizens for fear an ISDS claim will be brought against them. Research conducted by Gus Van Harten has found that “ governments have changed their decision making in favour of foreign investors in order to avoid financial and political risks of ISDS (7, p. 138)

- ISDS advocates argue that Canada must accept these provisions if we want free trade. However, Brazil and Australia have refused to include ISDS in their free trade deals and India, Indonesia and South Africa are saying they will avoid these provisions in the future (8)

Requested Action

- Please pass the proposed motion. If the TPP is ratified and implemented, despite the efforts of concerned Canadians across the country, please do not abandon the needs of the people in Hamilton for fear of the threat of lawsuits from foreign investors.

References

1. CoC About Us. Available at <http://canadians.org/about>
2. CoC statement on trade. Available at <http://canadians.org/trade>
3. Sinclair, S. and Trew, S. Introducing the TPP in The Trans-Pacific Partnership and Canada. A Citizen’s Guide. James Lorimer & Company Ltd. Toronto, 2016.
4. Boyd, D. Investor state arbitration: A dangerous and expensive obstacle to Climate action. The Toronto Star, January 11, 2016.
5. Ferguson, F. Ontario taxpayers on hook for \$25 million over stalled wind power project. Energy company wins legal fight after province pulled the plug on offshore turbines. The Toronto Star. October 13, 2016. Available at: <https://www.thestar.com/news/queenspark/2016/10/13/ontario-taxpayers-on-hook-for-25-million-over-stalled-wind-power-project.html>
6. Sinclair, S. NAFTA Chapter 11 Investor-State Disputes to January 1, 2015. CCPA. January 14, 2015. Available at <https://www.policyalternatives.ca/publications/reports/nafta-chapter-11-investor-state-disputes-january-1-2015>
7. Van Harten, G. Foreign investor protections in the Trans-Pacific Partnership. June 14, 2016. Available at <https://www.policyalternatives.ca/publications/reports/foreign-investor-protections-trans-pacific-partnership#sthash.elZ1WBod.dpuf>.
8. Singh, K. and Ilge, B. Remodeling India’s Investment Treaty Regime. Madhyam. July 12, 2016. Available at <http://www.madhyam.org.in/remodeling-indias-investment-treaty-regime-ii/>