

## Speaking points

GUE/NGL conference on CETA/TTIP/TISA - Stockholm, ABF House. - June 18, 2016

### C.E.T.A.

by Blair Redlin, co-chair Trade Justice Network (Canada)

\* The decisions Swedes, other European citizens and their governments make about CETA will have crucial implications for our collective democratic future, so the topics of this seminar today are very important.

\*Our own work on CETA is done through the Trade Justice Network which is a broad amalgam of trade union, environmental, farm and other civil society groups working in English Canada to both inform citizens about investor rights treaties like CETA, as well as to campaign against them. We work hand in hand not with RQIC, our sister network in French speaking Quebec, and also the Canadian Centre for Policy Alternatives which has done extensive analysis of trade treaties through its Trade and Investment Research Project.

\*Sometimes we are accused of being “anti-trade” which is pretty silly. It shouldn’t even need to be said, but of course we are not against trade and not against environmentally sustainable agreements to strengthen trading relations between nations. Trade has been important to economies throughout human history. What we are against, though, are these types of investor protection treaties which have less to do with trade than with significantly limiting the powers of elected governments to regulate and act in the public interest. They are charters of rights for international corporations.

\*Our Canadian perspective on corporate rights agreements like CETA is based in our experience with the North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico which came into effect in 1994. Since then, Canada’s value added manufacturing sector has been decimated and we have become much more reliant on export of raw, unprocessed resources like oil and gas, coal and minerals

\*Of course, the other big implication of NAFTA for Canadians has been the institution of the “investor to state dispute settlement” (ISDS) mechanism in the Chapter 11 of NAFTA which has empowered U.S. and Mexican based corporations to sue our government for policies they argue will limit their future potential profits. More on that shortly....

\*First, I wanted to outline some of our other concerns about CETA. We have many, but the ones I’d like to highlight today are (i) public services and the right to regulate (ii) higher pharmaceutical drug costs (iii) limits on the ability of municipal governments to support local economies and – of course – investor protections and the new twist on that called “ICS” that was recently agreed to by the European Commission and Canada

\*Despite assurances to the contrary, we are sure that CETA will limit the right of government’s to regulate. This is because one of key principles of the Regulatory Cooperation chapter is that ‘unnecessary barriers to trade’ should not be permitted. Often these are precisely the rules and regulations that protect consumers and the environment. Further, the deal stipulates that regulations must be “*as simple as possible*” and requires that they “*do not unduly complicate ...any economic activity.*” If we think about that for a moment, we can imagine how

environmental assessment processes, archaeological studies or community development plans with public input might all unduly complicate economic activity. The deal sets up a new “Regulatory Cooperation Forum” to discuss the regulations of the respective parties, but this will be a new opportunity for business lobbyists to pressure for deregulation.

With regard to public services, CETA is the first E.U. trade deal to use the “negative list” approach to reservations that either Party wishes to protect from the deal. Essentially, the negative list means that all services are covered by the provisions of CETA unless the Parties explicitly list them in advance. This means new services or services that either Party has neglected to include initially will automatically be covered.

Imagine how challenging it is for officials to predict what future services to predict when they use the negative list approach. If we think back even 25 years in the past, few would have been able to predict the widespread use of social media and other technology which has significant implications for services today.

As well as the negative list, the CETA includes so-called “ratchet” and “standstill” clauses which stipulate that any liberalization or deregulation that is already in place when the deal comes into effect may not be re-regulated. Finally, there is the option for corporations to sue under the dispute settlement provisions if there is a projected loss of anticipated future profits because a previously privatized service is brought back in-house or remunicipalized.

The proponents of CETA in the Canadian government and at the European Commission argue the right to regulate is protected because it contains a clause which “reaffirms” the right to regulate, but even that is a weakening of the previous draft language which said that the deal “shall not affect” the right to regulate.

In reality, when the necessity tests for public regulation are viewed together with the Regulatory Cooperation Forum, the negative list, the ratchet and standstill clauses and the power for corporations to sue if public services are brought back in-house, the CETA is a powerful tool for the deregulation of public standards and the privatization of public services.

\*When it comes to the likely impact on pharmaceutical drug costs, many Canadians are worried about the intellectual property provisions of CETA. CETA will enhance the profits of Big Pharma by delaying the entry of cheaper generic drugs into our health system for an additional two years. Studies by various experts – and by our own federal government – have predicted that this will increase Canadian drug costs between 6 and 13% by 2023...or more than \$1 billion (Canadian) per year. Canadian drug costs are already the second highest in the world after the United States, so this will be a big hit for lower income individuals who pay for drugs themselves, for provincial government drug plans and for our public health system in general. It is important for Europeans to note that similar patent extensions are on the pharmaceutical industries ‘wish list’ for the TTIP with the United States as well.

\*Another big concern in Canada is about the public procurement provisions of CETA. Each year, the federal, provincial and municipal levels of government in Canada purchase more than \$100 billion in goods and services. That’s a big number which has been the top target for European Commission negotiators. Unlike NAFTA, the procurement provisions of CETA apply to the ‘sub-national’ level, meaning our provincial governments and our local governments are all covered. In the Canadian constitution, provinces are responsible for a wide range of services including health care, education, social services, environmental protection,

liquor regulation and much else. For provincial and local governments, the CETA will greatly restrict the ability to use taxpayers dollars to support local businesses and local job creation since European based corporations will now be able to demand “unconditional” access to every contract of a reasonable size. This has raised concerns about “buy local” initiatives, the so-called “100 mile diet” movement which has been trying to get public institutions such as hospitals and schools to buy food grown within 100 miles of the facility, and measures to promote employment equity and minority hiring. Over 50 Canadian municipalities (including big ones like Toronto and Montreal) have passed resolutions calling on the federal government to exempt municipalities from CETA. These provisions may be a concern to Europeans as well, since they will limit the ability of your local governments to pursue localization initiatives for environmental reasons.

\*Finally, of course, the biggest concern in Canada – as in the E.U. – is the investment chapter and the provisions which allow corporations to sue (and to seek monetary penalties from) elected governments for their policies, laws and regulations if the corporate investors believe the actions of the government are going to reduce the “anticipated future profits” of the corporation. Even though Canada and the European Union both have well-established and functioning domestic legal systems, these CETA suits will not be heard in the domestic courts that you and I must rely upon. Instead, these suits are decided by unaccountable commercial arbitration panels which operate completely outside the regular courts. Domestic investors do not have access to these panels...only foreign investors do. There is no equivalent right of a government to sue an investor...only investors may sue governments. And the decisions of the panels are not appealable in the sense that normal court decisions are.

Canada’s extensive experience with this mechanism under NAFTA should be a warning for Europeans of what may happen if the CETA goes ahead. Canada is the most sued developed country under the investor to state dispute mechanism, having paid out hundreds of millions in penalties and now facing billions of dollars in current unresolved claims (and having paid tens of millions of tax dollars to defend ourselves against the suits).

Examples of such lawsuits include the recent Bilcon case, in which the decision about a proposed quarry by a provincial environmental assessment process set up under Nova Scotia law was overturned by a NAFTA panel because the panel decided it was not appropriate to consider “core community values.” Bilcon is claiming \$300 million in damages.

Or there’s the Ethyl decision, which decided that it was inappropriate for Canada to ban a potentially dangerous gasoline additive (MMT). After losing the NAFTA challenge to that regulation, Canada decided to restore MMT to our gasoline and its still there today.

Or the Abitibi-Bowater case, in which a pulp and paper company that had permanently closed a pulp mill claimed damages because a provincial government attempted to recover the water and timber rights that had been provided to the company in exchange for the mill and its employment. Canada paid out \$130 million to the company in that case.

As worrisome are the cases that are still in process and which have not yet been decided. Like the claim by Lone Pine Resources for \$250 million because the Province of Quebec put in place a moratorium on fracking in the St. Lawrence valley...a moratorium discussed and promised in a provincial election campaign. (By the way, Lone Pine Resources is based in Calgary in Canada and does 100% of its business in Canada. It is able to sue its own country under NAFTA because its official corporation registration – its ‘mailbox’ – is in the United

States). Or the suit by pharmaceutical giant Eli Lilly which is claiming \$500 million because it objects to our national generic drug policies. In the Eli Lilly case, the company has lost at every stage of our domestic court system...right up to a loss at the Federal Court of Appeal. Their NAFTA suit is an example of how companies are able to use trade and investment deals to circumvent decisions of the domestic courts in order to try to get their way.

\*The cosmetic changes to the investor rights provisions of CETA - which have changed the name of the previous ISDS system to a so-called "Investment Court System" (or ICS) – will do nothing to prevent the kind of lawsuits against European policies that Canada has suffered under NAFTA. As the German Association of Magistrates has pointed out, despite the name it will not be a real court at all. The ICS will create a more regular roster of arbitrators and will create a type of appeal mechanism to other arbitrators, but will still enable corporations to sue governments for monetary penalties outside of the regular domestic courts. Why do we need this mechanism at all? Why not just ask investors to use the regular courts if they have a grievance, just as all us citizens must?

\*I know many Europeans are deeply concerned about the prospect of investor rights in TTIP...the proposed trade and investment deal with the United States. They should be equally concerned about CETA, because Canada's economy is overwhelmingly dominated by U.S. based corporations. Even if TTIP does not go ahead – but CETA does – U.S. headquartered corporations will be able to sue Europe under this mechanism using their Canadian subsidiaries. Over half of annual foreign investment in Canada is from the U.S. and nearly 40% of all large enterprises in Canada are foreign owned. U.S. based companies like Cargill, Monsanto, Koch Industries, Exxon Mobil, Walmart, and Lockheed Martin are all extremely active in Canada and all will be entitled to use CETA to sue Europe.

All of these risks of CETA are ostensibly being taken on to support economic development, but most of our current trade between Canada and the E.U. is already tariff –free. The joint study by the European Commission and the Government of Canada on CETA in 2008 projected that CETA will increase economic growth in the European Union by only 0.08% after being in place for 7 years. That's less than .1% of G.D.P. growth after 7 years...practically no increase in growth really, since that small figure is within the margin of error. Is that really worth the risk of all the other negative implications of this deal?

This is perhaps one reason the labour movement in Canada and in most of the E.U. has been very critical of CETA. The European Trade Union Confederation (ETUC) and our labour central the Canadian Labour Congress have issued a number of joint statements on CETA, most recently in May. They raised a number of concerns about ISDS, public services, procurement and more and concluded in May that: *"Unless the text is adjusted to meet our concerns, we will have to call on our elected officials to reject the CETA."*

The new Trudeau Liberal government of Canada is just as determined to push CETA through as the former Conservative government was. And, of course, the European Commission is equally determined. It will therefore be up to us citizens in both Canada and Europe to insist that we want no part of a deal like CETA that so fundamentally strengthens corporate rights while weakening the powers of elected governments and the services they provide. Let's strengthen our work together across the Atlantic to make sure CETA is stopped and is never ratified.