

April 26, 2012

**Dear Mayor Fontana and councillors,**

On behalf of the Council of Canadians I'd like to thank the City of London for its continued interest and engagement with the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) negotiations. We understand that on May 1, City Council will be voting on a motion to seek an exemption from CETA for the City and other local agencies. The Council of Canadians strongly supports this motion because we believe it is the best way to truly protect municipal services and spending powers from unnecessary restrictions in the proposed EU agreement. The motion also sends a strong message to the federal and provincial governments that not enough is being done to keep municipal leaders as well as the general public aware of the Canada-EU trade negotiations.

Founded in 1985, the Council of Canadians is Canada's largest citizens' advocacy organization with tens of thousands of members across the country. We work nationally through our network of volunteer chapters, including a very strong chapter in London, to promote progressive policies on fair trade, access to clean water and sanitation, climate justice and energy security, public health care, and other issues of social and economic concern to Canadians. We are completely member-funded and do not accept or seek out corporate or government funding.

We have been monitoring the CETA negotiations since the Harper government announced its intentions to pursue a trade and investment agreement with the EU in late 2008. Though many of the details remain secret, the Council of Canadians and dozens of other civil society organizations under the banner of the Trade Justice Network continue to receive and analyze leaked copies of the negotiating text. We also take part in regular briefing sessions from Canada's lead CETA negotiator following each round. Our understanding of the potential municipal impacts is further informed by expert reports and legal opinions from both sides of the Atlantic.

**MUNICIPAL SERVICES AND CETA INVESTMENT PROTECTIONS**

Federal Trade Minister Ed Fast is assuring municipalities that their ability to set public policies, their "right to regulate," will not be jeopardized under CETA. In fact, free trade agreements are designed to restrict that right to a greater or lesser extent based on the deal. For example, several countries, including Australia, are currently being challenged at the WTO, and sued by cigarette firms under bilateral investment treaties, for plain packaging or public health labelling legislation designed to discourage smoking. Quebec's cosmetic pesticide ban survived a recent NAFTA investment dispute but at a cost of an official apology from the Province and federal government for implying, as the science suggests, pesticides can be harmful to children.

The Council of Canadians and the Canadian Union of Public Employees have drawn attention to the way that trade agreements can affect the provision and regulation of essential services delivered at the municipal level, with a focus on drinking water and sanitation. Our joint report, *Full of Holes*, which we

released in January in response to newly leaked CETA documents, asks why the EU has sought to carve out water services from its offers but not Canadian provinces or territories. The impression this gives to the EU is that Canada is “open for business” in the water services sector, which would be convenient for the world’s largest private water providers based in Europe.

*Canada is seeking a blanket exemption for existing municipal measures that do not conform to CETA rules, for example municipal monopolies on water delivery and treatment. But there is no room for new or restored public services in the text we have seen. Since Canadian provinces and the federal government have made similar reservations related to energy, fisheries and telecommunications, we question why they chose not to do the same for a sector as crucial as water services.<sup>11</sup>*

The Council of Canadians and CUPE do not suggest, as Minister Ed Fast proposed recently in a communication to municipalities, that CETA rules will force local governments to privatize water systems. We do maintain that agreements like the CETA are designed to encourage the creation of private markets where they don’t currently exist. In the Canadian context, that includes the water delivery and treatment process, which is largely publicly owned and managed. Clearly the current federal government wants to move Canada in that direction as European and other countries turn against privatization of essential services. As we say in our report:

Privatized water services are being remunicipalized because of poor service levels, high costs and lack of democratic accountability. If Canada does not exclude drinking water and wastewater services from CETA, it will take away the policy space for municipal, regional or provincial governments to reverse the privatization of their water services in the future.

## **PROCUREMENT IN THE CETA AND THE AIT**

We are also extremely concerned about the procurement rules in CETA as they would apply to municipalities. The CETA procurement rules differ from existing commitments covering municipal governments under the Agreement on Internal Trade (AIT). Perhaps most importantly, the AIT allows provinces and covered municipal entities to apply national preferences (“Buy Canadian” rules) on public contracts as long as this is done in a transparent way. Some municipalities have used this allowance to apply Canadian content quotas on major infrastructure projects such as urban transit and renewable energy. Under the AIT, municipalities can also in some cases apply local training or hiring quotas as well as other incentives designed to encourage local development.

The CETA, like the WTO Government Procurement Agreement on which it is based, clearly states that, “With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset,” where offset is defined as:

*any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter trade and similar action or requirement.<sup>12</sup>*

When Canada, the United States and Mexico decided to prohibit government’s from putting local investment conditions on inward foreign direct investment it was controversial enough. For example, Newfoundland and Labrador is facing an investor lawsuit under the NAFTA for its requirement that offshore oil firms should invest in research and development within the province. But it is even more difficult to understand why municipalities, or provincial and territorial governments for that matter, would

willingly prohibit themselves from trying to get the most out of their own money, or more accurately public money provided to them through taxation.

The blanket prohibition of local development tools on public spending, not just for current municipal governments but all future ones, is unreasonable not to mention unusual. It should also worry local councils that CETA procurement rules will be enforced through a dispute settlement process (either through the courts or the Canadian International Trade Tribunal) that is easily accessible to bidding firms.

In our view, it makes more sense for municipalities to retain the freedom to open contracts widely to national and foreign bidders where value-for-money is the primary concern. When and where it makes sense to use procurement as a job creation or economic development tool, this should not be hampered by international trade agreements.

### **TRADING MARKET ACCESS FOR MUNICIPAL DEMOCRACY**

The Council of Canadians feels that municipal governments have been treated like bargaining chips in the CETA negotiations; their local autonomy and local democracy will be undermined in exchange for marginal new access to the European market for beef, pork and other low-value goods, and for select Canadian service firms already operating or looking to expand in Europe. It's not that we oppose Canadian producers seeking new markets. Diversifying trade from the U.S. market is a worthy goal. We simply disagree with the federal government and provinces that the procurement and services rules are worth the gamble for municipal governments.

Canadian trade negotiators and public officials will readily admit that procurement is a bigger deal for the EU than for Canada. Though the provinces recently made new commitments on procurement at the WTO level and through bilateral negotiations with the United States (the so-called "Buy America" deal of February 2010), these went far enough. There is no good reason for expanding provincial offers to include municipalities simply to satisfy an overstretching EU demand in the CETA negotiations.

Furthermore the CETA investment rules should allow maximum space for municipal governments to expand or create new public services without fear of trade and investment challenges. The agreement as we've seen it is weighted far much in favour of the rights for multinational corporations versus rights for local governments.

In conclusion, I strongly encourage you to support the motion before you on seeking an exemption for the City of London from CETA. This is not a left or right issue but rather about local democracy and the right of citizens, through their elected municipal representatives, to make decisions about the economy, environment, and local procurement as they see fit. By passing this motion, the City of London would join over 33 other Canadian municipalities, including nearby Hamilton, Stratford, Mississauga and Toronto, as well as the full Union of British Columbia Municipalities in calling for greater transparency in the CETA talks and a greater role for local democracy in Canadian trade agreements.

Sincerely,



Maude Barlow, National Chairperson  
The Council of Canadians