

CETA

TTIP's little brother

October 2016



The Comprehensive Economic and Trade Agreement (CETA) is a trade deal between Canada and the EU. It is one of a new wave of aggressively neoliberal trade agreements including TTIP and TPP. Negotiations on CETA are complete and it will go to the EU Council of ministers this month, and then to a yes-no vote by MEPs after that. If MEPs vote in favour of the deal, then at that point all aspects of CETA that are considered of EU competency will be provisionally applied in all member states. The remaining aspects are ratified through national parliaments.

As the UK leaves Europe, we will still be subject to the parts of CETA considered to be under EU competency for three years, and for twenty years if the UK parliament has ratified the deal before Brexit is complete. After Brexit it is anticipated that the current UK government, as a vociferous supporter of these kinds of trade deals, would base its bilateral trade deals on this model. If Scotland remains in Europe, then of course we will be subject to CETA in its entirety, and then TTIP when, or if, that is passed later.

Global Justice Now, and many others including the trade unions, has serious concerns about these deals, because of the impact they will have on the ability of the Scottish and UK parliament to legislate for the benefits of people and the environment. Their effects will go far beyond the customs border into the sphere of public policy, regulation and public services. They will shift the balance of power more and more towards big business and away from governments. And they put trade above all else.

Introducing CETA

CETA is the 'little brother' of the more well-known Transatlantic Trade and Investment Partnership (TTIP), and includes a version of the controversial investor state dispute settlement (ISDS) clause which will allow corporations to sue governments in special tribunals if they put in place laws that affect company profits. Our concerns about the impact of CETA in Scotland include:

- That the final text contains the Investor Court System (ICS), a version of ISDS

- CETA will lock in privatisation of public services like the railways and the Post Office, and encourage greater private sector involvement in Scottish Water.
- That the deal will hamper the ability of the Scottish government to choose whether or not to allow particular fossil fuel extraction activities such as fracking, based on the consideration of risks to human and environmental health.

Big business suing government

Last October, MEPs voted against including ISDS in TTIP. As a result, the EU Commission proposed a modified version of this parallel legal system, called the Investment Court System (ICS). The Canadian government then agreed this could be inserted into the finalised CETA agreement. While the reformed version is an improvement in some ways, it has also legitimised a system that grants special status to foreign corporations, allowing them to challenge the laws that apply to everyone else in special courts outside of the domestic court system. Shortly after the EU Commission put forward their reformed court system, Germany's biggest association of judges put out a statement rejecting their proposals, arguing that "neither is there a legal basis nor the necessity" for such a court¹.

The UK and Scottish governments should be concerned about ICS. Since the Canadian government signed up to the North American Free Trade Agreement (NAFTA), the trade deal on which large sections of TTIP and CETA are closely modelled, it has become the most sued country in the developed world. Since ratification in 1994, Canada has paid out more than \$200 million in compensation to US companies². A Canadian company, Lone Pine, even managed to sue its own government using a subsidiary company in the US, because the state of Quebec had chosen to issue a moratorium on fracking. Lone Pine had licenses to frack in the state and so sued the Canadian government for lost profits.

The 'regulatory chill' effects of the investor court system are of particular concern. For example, the

tobacco company Philip Morris recently lost its ISDS case against the Australian government who were the first country to pass a law on plain packaging for cigarettes. Despite winning the case, the Australian government must still pay \$50 million in legal costs. But the case persuaded both the New Zealand and the UK government to delay similar legislation. Canada shelved plans to introduce plain packaging laws after a tobacco company sent a memorandum to the Canadian House of Commons threatening to sue using ISDS in NAFTA³.

Locking in privatisation

CETA is the first trade agreement to use a 'negative listing' approach to protect public services from liberalisation. This means that all services are open to Canadian companies to tender for, unless they are specified for exemption. Previously, only a 'positive listing' approach – where countries must specify what services will be open to private tender - has been used in trade deals. Negative listings dramatically expand the scope of a trade agreement as governments make commitments in areas they might not even be aware of, such as new services emerging in the future⁴.

The EU has negotiated exclusions in CETA for public services including health, education and social services, although the definition of what a public service is remains unclear. The agreement may encourage the breaking up of Scottish water as a public monopoly. While water for drinking is included in the public service exemption, waste water treatment is excluded from the exemption list.

CETA also includes a ratchet clause to lock in current and future levels of privatisation and increase the role of the private sector in the future. If a Scottish or UK government of the future wished to renationalise the Post Office or the railways for example, then they would be breaking the terms of CETA.

Danger to the climate

CETA will provide a major opportunity for foreign energy and mining companies from Canada, and companies with subsidiaries in Canada, to step up fracking and other environmentally damaging activities in the EU. Seventy five per cent of the world's mining companies are based in Canada⁵ where the industry has the worst environmental and human rights record of anywhere in the world. Already, the Canadian government has used the CETA negotiations to persuade the EU to weaken its Fuel Quality Directive - a key piece of legislation for tackling climate change - that would have effectively banned the import of oil from tar sands. CETA might also empower US oil and gas companies to challenge fracking bans and moratoriums in Europe such as the one currently in place in Scotland. US companies would just need to have a subsidiary or an office in Canada to make a challenge under CETA.

Public opposition to CETA

Around the world, opposition to CETA and similar trade deals is growing fast. 3.4 million people in Europe have signed a petition to stop TTIP and CETA. Last October, a quarter of a million people were on the streets of Berlin protesting against these secret deals. Last month, more than 300,000 marched against CETA in Germany and Austria. Recent polls in Europe have shown that the more people know about TTIP and CETA the less they want them. Support for the ongoing TTIP negotiations has fallen in 24 out of the 28 EU member states in the last year.

Here in Scotland, the Scotland Against TTIP coalition has been active in its opposition to TTIP and CETA. The coalition is a broad based alliance with more than 25 member organisations including Global Justice Now, FoES, STUC, Unite, Unison, WFI, RIC, and many others. Across Scotland, local groups are springing up all the time to campaign locally on TTIP and CETA, and a third of local authorities in Scotland have now passed motions against TTIP.

1 <http://www.globaljustice.org.uk/blog/2016/feb/3/if-youre-worried-about-our-sovereignty-read-german-judges-damning-indictment-ttip>

2 <http://www.globaljustice.org.uk/resources/fighting-ttip-ceta-and-isds-lessons-canada> p.6

3 http://www.huffingtonpost.com/lori-wallach/public-interest-takes-a-h_b_8918010.html

4 <http://corporateeurope.org/sites/default/files/attachments/public-services-under-attack.pdf> p.3

5 <http://www.globaljustice.org.uk/resources/fighting-ttip-ceta-and-isds-lessons-canada> p.12