JOINT STATEMENT FROM ETUC AND CLC
The CETA: where we are at and what needs to be changed

Adopted at the Executive Meeting of 13 April 2016

When Canada and Europe set out to negotiate a free trade agreement a few years ago, there were high hopes that this exercise might lead to a new "gold standard" in this area: an agreement that would show it is possible to deepen trade links while maintaining and increasing social, labour and environmental standards.

This was considered possible because this was a negotiation between two developed regions with high social, labour and environmental standards. As well, given the new emerging challenges in the area of social cohesion and sustainable development, the times seem ripe for a change in paradigm.

At the outset, the CLC and European trade unions expressed the hope for transparency of the negotiations and for a full participation of workers and civil society. However, in Europe and Canada there was very little trade union or civil society engagement during the negotiation process. After years of secrecy, the fully negotiated text was published– allegedly no longer open for debate and amendments. It is to be hoped that we will now have a full opportunity to provide insight into the CETA before it goes for a vote.

Since the agreement has been tabled, little discussion has taken place in Canada, while Europeans, have had greater opportunities to share their views. Due to the significant concerns trade unions and many civil society groups raised over ISDS, the investor-state provisions were changed in CETA which have made some think that the draft is now ready for adoption.

Trade unions on both sides of the Atlantic beg to disagree. The CLC and the ETUC would like to take full opportunity of the space now available to us to suggest that the CETA needs more work.

When it comes to tariffs reduction on most industrial goods, we have for the most part, little to object.

Our main problem appears when, in the name of access and non-discrimination, the CETA, like all recent trade agreements, reduces the space for public policy, and adds constraints for governments striving to provide services or regulate in the public interest. Unfortunately, on this score, the CETA comes up short.

We would like to suggest a number of key changes

Because they affect all parties in a rather symmetrical way, these changes would not overly upset the balance of concessions that has been achieved so far, but would in effect mean that all parties would retain greater policy and regulatory space.

First, while we take stock of the improvements that have been made to the investor-state provisions, we find them insufficient. The creation of an investment court will not remedy the principal defect of investment arbitration, which is not about process but about substance. In our view, the treaty disciplines enforced by this cadre of investment and trade lawyers remain mostly intact, notably in treating foreign investors differently to national investors. The changes still beg the question of why an ICS or ISDS is needed at all between countries with fully developed and effective court systems.

An investor-state arbitral system that is not subsidiary to national judicial systems provides in effect a VIP process for foreign investors.

Secondly, the privileged status for investors stands in sharp contrast with very mild labour standard provisions which have no enforcement mechanisms. As mild as they are, they still encourage Canada to ratify and fully implement at least all of the core labour standards, which we would hope would be done by the time the agreement would come into force. If this agreement truly aims at becoming the gold standard for trade agreements, violations of its labour provisions should most definitely be subject to its dispute settlement process and punishable ultimately with sanctions.

Further, we would like to see a requirement for a full review of the merits and effectiveness of both the investment and labour provisions following the eventual adoption of the CETA with a view to possibly revise them within a five-year period.

Thirdly, we observe in the area of services, the use of a “negative list” which has the potential to commit future governments to liberalization even in areas that do not yet exist. This means liberalization by default for all new service areas. We believe no sensible government can reasonably make such a commitment.

Fourthly, public services are not categorically excluded from the CETA service liberalization. What is more, public services listed in the reservations under Annex 1 remain subject to the so-called “standstill” and “ratchet” clauses, meaning that they are either locked at the current levels of liberalization or that if they are further liberalized, they will be locked at that new level of liberalization. In combination with the investor-state provisions, this feature will prove to be a real and costly obstacle to future governments, at all levels, that may want to increase the public involvement in erstwhile liberalized services. CETA must contain a “positive list” for its service commitments and no ratchet or standstill so public services are fully excluded from the deal.

Lastly, while we have no issues with the ability of foreign firms to bid for procurement contracts in one another’s jurisdiction, we think the current prescriptions in the CETA which call for “unconditional” access are excessive and self-defeating. Local governments should have the ability to attach social and environmental conditions to their public tenders. This is all the more evident in the context of the job crisis that several countries are undergoing and with the imperative to meet the climate challenge. The capacity of government to translate needed public investment in tools to improve environmental standards and lever local employment should be evident
for all to see.

Our world is facing great and difficult challenges in the areas of economic sustainability and social cohesion, the ongoing discussion about the CETA should fully reflect these concerns. The changes recently made to the ISDS provisions show that it is possible and legitimate for reasonable partners to improve the CETA. There will be no great loss if another year is spent getting the agreement right, but an awful lot to lose if it is rushed through in the name of short-term political expediency. Unless the text is adjusted to meet our concerns, we will have to call on our elected officials to reject the CETA.