

The great CETA swindle



With a fast approaching European Parliament vote on the EU-Canada trade deal CETA and potential subsequent rows over its ratification in EU member states, CETA continues to draw heavy criticism. A close look at the text of the agreement – and recent declarations designed to reassure critics and gain support for its ratification – shows that concerns over CETA are well-founded. Behind the PR attempts by the Canadian Government and the European Commission to sell it as a progressive agreement, CETA remains what it always has been: an attack on democracy, workers, and the environment. It would be a major mistake to ratify it.

On both sides of the Atlantic, the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada is hugely controversial. A record 3.5 million people across Europe signed a petition against CETA and its twin agreement TTIP (Transatlantic Trade and Investment Partnership).¹ European and Canadian trade unions, as well as consumer, environmental and public health groups and small and medium enterprises (SMEs) reject the agreement.² Constitutional challenges against CETA have been filed in Germany³ and Canada⁴ and the compatibility of CETA's controversial privileges for foreign investors with EU law is likely to be judged⁵ by the European Court of Justice.

CETA fails the consumer crash test... The agreement contains provisions that could undermine current and future levels of protection for consumers.

European consumer organisation BEUC⁶

The controversy has also reached governments and parliaments. Across Europe, more than 2,100 local and regional governments have declared themselves TTIP/CETA free zones, often in cross-party resolutions.⁷ National and regional parliaments, too, worry about CETA, for example in Belgium, France, Slovenia, Luxembourg, Ireland, and the Netherlands. In October 2016, concerns in four sub-federal Belgian governments (led by Wallonia⁸) over the agreement's negative impacts, and in particular its dangerous privileges for foreign investors, nearly stopped the federal government from approving the signing of CETA.

We congratulate you for your strong stance against CETA in spite of all the pressure on you to abandon this principled position.... Your analysis of CETA highlights concerns shared by many Canadian civil society organizations, including our own.

National Farmers Union in Canada, letter to the people of Wallonia and their representatives⁹

Whitewashing CETA, smearing critics

Over the past months, to salvage CETA's ratification process, European and Canadian trade officials have gone into a massive propaganda mode. They have framed CETA as "a very progressive trade agreement" (European Trade Commissioner Cecilia Malmström¹⁰) which will "shape globalisation" along the principles of "fair trade" and in the interest of workers (Germany's Foreign Minister Frank-Walter Steinmeier¹¹).

The deal's critics have been stigmatised as "trade hooligans" (European Council President Donald Tusk¹²) who live in a "post-factual reality" (Tusk, again¹³), "fuelling concerns and fears, which have no bearing on the actual CETA text" (Conservative MEPs Daniel Caspary and Elmar Brok¹⁴). Large parts of the media have joined the CETA cheerleading, claiming that "much of the criticism, which might be justified for TTIP, does not apply to CETA" (German news site *Spiegel Online*¹⁵). When the Walloon government, after 70 hours of public consultations on CETA in its Parliament¹⁶, held up the CETA ratification, media commentators slammed the act as "based on general opposition to globalization, which mainly plays on emotions, largely ignoring facts".¹⁷ The chair of the European Parliament's trade committee, Social Democratic MEP Bernd Lange, called the Walloon call for a re-negotiation of CETA "one step further towards the destruction of the European Union".¹⁸

The new favourite media frame to dismiss people opposed to these agreements? Isolationism.

Murray Dobbin, Canadian journalist¹⁹

Deceptive declarations

The latest PR move of the CETA supporters is a multitude of 39 (!) declarations and statements²⁰ accompanying the text of the agreement. These texts are designed to alleviate concerns amongst Social Democrats, trade unions, and the wider public who fear that CETA threatens public services, labour and environmental standards and undermines governments' right to regulate in the public interest. But in fact, the declarations do nothing to fix CETA's flaws.

All but one declaration are unilateral. This includes a statement by Belgium (agreed upon between its federal and regional governments to overcome the Walloon hold-up of the ratification process) and a paper by the European Commission and the Council on CETA's controversial investor rights. As the Centre for European Policy Studies (CEPS) think tank has pointed out, these unilateral declarations "do not give a binding interpretation on CETA... nor do they constitute binding EU acts".²¹ In other words: they have no legal weight at all.

Unfortunately, the joint interpretive "instrument" is mostly artful deception.

Scott Sinclair & Stuart Trew, Canadian Centre for Policy Alternatives²²

This is different for the EU-Canada "joint interpretative instrument", which was hammered out by Ottawa and Brussels. This is a legally binding document, which would be considered in future disputes over CETA as a source guiding its interpretation. However, it would be largely without consequences. Because while the instrument might sound re-assuring to those not deeply familiar with the CETA text, it "does not offer any legally secure improvements or solutions for any of the contested and critical points" (German law professor Markus Krajewski²³). In short, it is "artful deception".²⁴

Empty words on the right to regulate

Take the right to regulate, for example. The Ottawa-Brussels joint interpretative instrument states: "CETA preserves the ability of the European Union and its Member States and Canada to adopt and apply their own laws and regulations that regulate economic activity in the public interest, to achieve legitimate public policy objectives" ranging from public health to social and consumer protection (article 2). That sounds good. But as Canadian trade experts Scott Sinclair and Stuart Trew explain: "The critical point missing from this statement is that while the parties retain the right to regulate, they must do so in conformity with their CETA obligations and commitments".²⁵ So while a government could very well pass a law under CETA, it could still be forced to pay billions in compensation when this law was found to violate its CETA obligations towards foreign investors, for example. The interpretative instrument does not change that. Therefore, its affirmation of the right to regulate is pretty meaningless.

Anyone who had concerns, but is reassured by this, doesn't know much about law.

Simon Lester, pro free trade CATO Institute, on the EU-Canada CETA instrument, first version²⁶

The declarations accompanying the CETA text are full of similarly misleading statements that avoid the key problems of the agreement. Lets turn to some key passages and issues in order to see through the big swindle, which CETA supporters are currently engaged in, in order to win support for what is actually a major assault on democracy, workers, and the environment.

Swindle #1: CETA protects workers' rights

The European Commission praises CETA's "strong rules on the protection of labour rights".²⁷

But the actual labour protections in CETA are poor. Chapter 23 on trade and labour is full of good intentions, such as that "a Party shall not... fail to effectively enforce its labour law and standards to encourage trade or investment" (article 23.4.3). But there is no penalty under CETA if EU countries, Canada, or companies operating there violate a provision like this. Unlike other parts of the text – for example, the rights for foreign investors – CETA's labour rules cannot be enforced through trade sanctions or financial awards (articles 23.10 and 23.11.1). A violation of CETA's labour rights would only result in a non-binding process of discussions and recommendations.

Does any of the 39 declarations now accompanying CETA change that? No.

We stand with European workers and members of civil society mobilizing in Germany, Austria, Belgium and elsewhere to resist CETA, which has many of the same dangerous provisions as TTIP.

Linda Silas, President of the Canadian Federation of Nurses Unions²⁸

European and Canadian trade unions have proposed a protocol²⁹ – to make CETA's labour rules effectively enforceable. The issue is important for them as they fear that CETA would put labour standards at risk (as employers can more easily shift capital to locations where standards are weak and laxly enforced).

Previous experience with unenforceable labour chapters in existing EU trade deals (such as those with Columbia and Korea) shows the European Commission took no action, even in the case of egregious labour rights violations well documented by the labour movement.³⁰

Echoing the unions' demands, Germany's Social Democrats, too, have stressed that "to make CETA consensual... a sanctioning mechanism must be developed for violations... against labour, social and environmental standards".³¹

As trade unions are offered reviews and monitoring, foreign investors still get access to special courts that can deliver them multi-million dollar compensation.

Owen Tudor, British Trade Union Congress (TUC), on the CETA joint interpretative instrument³³

CETA's accompanying statements read like a slap in their face. No EU member state raised labour rights in their unilateral statements. And large parts of the "interpretative instrument" are a mere repetition of CETA's inconsequential language on the issue, for example, that the EU and Canada "cannot relax their labour laws in order to encourage trade or attract investment" (article 8a). The instrument also indirectly admits that CETA's labour protections are de facto non-enforceable – because it promises an "early review" of CETA's labour chapter "with a view" to its "effective enforceability" (article 10a). But just how serious can such a promise be taken after five years of negotiations and two years of legal scrubbing of the CETA text, with ample trade union input on its labour chapter and no changes to its substance? The Canadian Trade Justice Movement, which represents all of Canada's larger trade unions, the Canadian Labour Congress and a number of NGOs, does not seem to have high hopes. It has slammed the instrument as "a display of arrogant condescension" in light of the "very specific amendments" that had been put forward by labour.³²

The low status of labour rights in CETA could have serious implications. Many parts of the agreement could seriously challenge the hard earned rights of workers and trade unions: CETA's public procurement rules could lead to legal challenges when public authorities link their buying practices to social criteria such as the minimum wage or compliance with collective agreements; CETA's foreign investor

privileges could lead to expensive lawsuits against states when they don't interfere in long-lasting strikes or when regions establish mandatory minimum staffing levels in hospitals or nursing homes; and the weakening of domestic regulation could present new obstacles to efforts to ensure that services suppliers abide by labour rules. The list goes on and on (see Making Sense of CETA³⁴ for an analysis of CETA's different chapters).

Finally, CETA is likely to lead to significant job losses. According to a September 2016 study³⁵ from Tufts University, 230,000 jobs could be lost in total. This would depress wage growth and by 2023 workers would have foregone average annual earnings of €1776 in Canada and between €316 and €1331 in the EU (depending on the country and compared to a scenario without CETA). The researchers also predict a politically dangerous rise in inequality as the gains from CETA would overwhelmingly go to owners of capital – not workers. These forecasts reflect the experience under previous trade deals such as the North American Free Trade Agreement NAFTA (see the assessment³⁶ of the US trade union confederation AFL-CIO).

It is high time that Europe's and Canada's policymakers wake up to the fact that freeing trade does not necessarily create extra jobs but instead carries a high risk of welfare losses, heightened inequality and fragmentation – all sources feeding the groundswell of discontent.

Economists Servass Storm & Pierre Kohler³⁷

So, rather than protecting workers as its cheerleaders claim, CETA promotes the wealth and power of a very few at the expense of workers. They get nothing but inconsequential feel-good rhetoric. The additional statements and instruments do nothing to change that.

Swindle #2: CETA is a good deal for the environment

According to the European Commission, CETA contains "strong rules on the protection of... the environment".³⁸

But the actual protections in the CETA text are weak. Like the chapter on labour, chapter 22 on sustainable development and chapter 23 on trade and environment contain sweet-sounding language on “trade supporting sustainable development”, “trade favouring environmental protection” and so on. But like the labour chapter, CETA’s environmental provisions cannot be enforced through trade sanctions or financial penalties if they are violated. Victims of environmental abuse cannot bring a claim. Also, CETA does not include provisions that would allow urgently needed environmental and climate policies to overrule, or otherwise be exempt from CETA rules that might endanger them.

There are many rules in CETA which will make it more difficult to fight climate change and protect the environment: CETA’s investor rights could trigger costly lawsuits from polluting companies when governments ban or regulate dirty mines or want to phase-out fossil fuels; CETA’s liberalisations in the agricultural sector and the thin protections for high food production standards would expand an industrial model of farming that is already destroying the planet; CETA’s procurement rules could be used to sideline environmental criteria in the buying practice of public authorities; under CETA’s regulatory cooperation provisions, a series of complex and opaque procedures could lead to butchery in the field of environmental protection and inaction in the future; and as CETA encourages more trade, production and extraction, greenhouse gas emissions are likely to increase. (See Making Sense of CETA³⁹ for an analysis of the different CETA chapters.)

CETA goes in the opposite direction of our international commitments to limit global warming below a temperature rise of 2°C.

Environmentalists Nicolas Hulot (France), David Suzuki (Canada) and Karel Mayrand (Québec)⁴⁰

Do the many declarations, which are now accompanying the CETA text contain anything that will reduce CETA’s threats to the environment? Not really.

The EU-Canada “interpretative instrument” refers to CETA’s allegedly “comprehensive and binding commitments for the protection of workers’ rights and the environment” (article 7b). But like the CETA text, it fails to make them effectively enforceable. Indirectly, the instrument admits that CETA’s environmental protections are a toothless tiger when it promises an

“early review” of the environmental chapter “with a view” to its “effective enforceability” (article 10a). But the question has to be asked again: how serious can such a promise be after five years of negotiations and two years of legal scrubbing of the CETA text, in which ample input on the enforceability of its environmental and labour provisions – for example, from trade unions – has been ignored?

It is likely that current and future EU regulation for the protection of health, the environment and consumers will be rendered more difficult by the CETA- and TTIP-drafts. The EU precautionary principle and its future application is not sufficiently anchored and safeguarded in the treaty texts.

Law professor Peter-Tobias Stoll, University of Göttingen⁴³

On the precautionary principle, consumer and environmental groups have lambasted the “interpretative instrument” as a “bad joke”.⁴¹ The principle is enshrined in the EU treaties and allows policy-makers, for example to ban a product if there is a suspected risk that it will cause harm – but no undisputed scientific consensus. The CETA text does not mention the precautionary principle, but refers to its opposite, the supposed “science-based” approach in which a risk must be unequivocally proven before a product can be banned (articles 24.11.2c and 25.2.2b).⁴²

Instead of safeguarding the precautionary principle in the CETA “joint interpretative instrument”, the EU and Canada “reaffirm the commitments with respect to precaution that they have undertaken in international agreements” (article 1d). Friends of the Earth Germany (BUND) told Corporate Europe Observatory that this reference to international agreements (which include, for example, the World Trade Organisation) could even worsen CETA’s impact on precautionary measures. The WTO only allows provisional actions under the precautionary principle: one of the reasons the EU has lost WTO challenges (pursued by Canada) against its import ban for hormone-treated beef and its strict GMO policy. That the interpretative instrument reaffirms treaties, under which the EU has lost claims when it applied the precautionary principle, is an “absurd farce”, BUND has argued.

If politicians call CETA a gold standard for international trade, they are suppressing its fatal flaws. With CETA, plate is sold as gold.

Matthias Flieder, environmental group Greenpeace⁴⁷

In a separate, unilateral declaration (number 7 in the Council minutes⁴⁴), the European Commission states that “nothing in CETA prevents the application of the precautionary principle in the European Union as set out in the Treaty on the Functioning of the European Union”. Canadian trade experts Scott Sinclair and Stuart Trew have argued that this is “cynically circular, since precautionary measures that violate CETA’s rules on investment, domestic regulation, cross-border trade in services, technical barriers to trade, etc., could still be disputed by aggrieved investors or by the Canadian state.”⁴⁵ To rub salt in the wound, unilateral declarations “do not give a binding interpretation on CETA... nor do they constitute binding EU acts”.⁴⁶

In short, the pro-environment rhetoric around CETA is pretty empty and meaningless. It is nothing but an attempt to greenwash a deal which poses real threats to the environment and strong action to save the planet from climate disaster.

Swindle #3: CETA’s investor rights safeguard the right to regulate to protect the environment, health and other public interests

According to the European Commission, “CETA ensures protection for investments while enshrining the right of governments to regulate in the public interest, including when such regulations affect a foreign investment.”⁴⁸

The critical point missing in this statement is, again, that while parties have the right to regulate, their regulations must be in line with their CETA obligations and commitments. And CETA’s chapter eight on investment contains the same wide-ranging ‘substantive’ rights for foreign investors as existing international treaties, which have been the legal basis for hundreds of investor lawsuits against states – including against regulations to protect health, the environment, and other public interests. Examples include the protection against direct and indirect expropriation (article 8.12) and fair and equitable treatment (article 8.10).⁴⁹

With these extreme corporate rights, many egregious investor attacks could take place under CETA. Examples from similar previous cases include energy company Vattenfall’s €1.4 billion challenge against Germany for Hamburg city’s imposition of environmental standards on a coal-fired power plant (which was settled when Germany agreed on lower standards); or mining company Bilcon’s US\$101 million lawsuit against Canada over the rejection of a large quarry, following an impact assessment warning of potential adverse social and environmental effects (which Canada lost).⁵⁰

In light of the large stock and flows of transatlantic investment, introducing foreign investment protection in TTIP and CETA will potentially lead to a large number of investor-state claims and subsequently to high legal fees and billions of damages paid out of public budgets.

Statement by 101 law professors from 24 EU countries, opposing CETA’s & TTIP’s investor rights⁵¹

Under CETA, tribunals deciding such claims could not order governments to reserve or rewrite a law (article 8.39.1). But it doesn’t take much to imagine how, by empowering multinationals to claim eye-watering sums in compensation for public decisions, CETA’s investor rights could make politicians reluctant to enact desirable safeguards if those are opposed by big business. Examples of such regulatory chill include the above mentioned settlement between Germany and Vattenfall and the delayed implementation of anti-smoking rules in Canada and New Zealand, following lawsuit threats and actual claims by big tobacco.

Do the declarations, which are now accompanying CETA change that? The answer is no.

How will governments react when they face even a low risk of losing a CETA claim? If the amounts at stake run into the hundreds of millions or billions of dollars, any responsible government can be expected to think twice about this risk.

Law professor Gus van Harten, Osgoode Hall Law School⁵³

The EU-Canada “interpretative instrument” states that “CETA clarifies that governments may change their laws, regardless of whether this may negatively affect an investment or investor’s expectations or profits” (article 6b). Again, this misses the criticism of CETA’s investment chapter. As Canadian law Professor Gus van Harten explains: “The problem is not that CETA prevents laws and regulations outright. It is that the CETA will make some laws and regulations too risky to pursue by putting an uncertain and potentially huge price tag on them... And it is the fact of the risk – i.e. a non-negligible risk of potentially massive liability for the state – that gives foreign investors their special bargaining power to undermine democratic regulation.”⁵²

In addition, the “interpretative instrument” contains a long list of misleading and, sometimes, factually wrong claims on CETA’s investment part. For example, it states that

- “CETA will not result in foreign investors being treated more favourably than domestic investors” (article 6a). But CETA allows only foreign investors to bypass domestic courts and sue states directly in parallel tribunals – domestic firms (and citizens) simply do not have this privilege.
- “CETA includes clearly defined investment protection standards... and provides clear guidance to dispute resolution Tribunals on how these standards should be applied” (article 6c). That is untrue. Many of CETA’s investment provisions are ambiguous and leave ample room for interpretation, opening the door to totally unforeseeable rulings by tribunals. (Gus van Harten runs through some examples in his analysis of the interpretative instrument⁵⁴)
- “CETA clarifies that any compensation due to an investor will be based on an objective determination by the Tribunal and will not be greater than the loss suffered by the investor” (article 6b). This might be read as a guarantee that investors will only be compensated for money that they actually spent on a project. But under the extensive case law in the field, expected profits are generally considered to be part of the “loss suffered by the investor”. This means that CETA tribunals could order states to pay unlimited amounts in compensation – including for investors’ lost expected future profits (like in the case of Libya which was ordered to pay US\$900 million for “lost profits” from a tourism project, even though the investor had only invested US\$5 million and construction had never started).⁵⁵

It is a fundamental problem that investors’ rights get strengthened through additional international rights and procedures, while the solution of other problems should be the top priority: the better enforcement of labour rights, for example.

German trade union confederation DGB⁵⁶

So, rather than safeguarding the right to regulate as its proponents claim, CETA will force governments to pay when they regulate – whether it is to protect the environment, health or other public interests. And this threat alone is a sure-fire way to bully decision-makers, potentially curtailing desirable policymaking.

Swindle #4: CETA protects public services like healthcare and water

In September 2016, European Trade Commissioner Cecilia Malmström assured the Austrian Parliament (and in nearly identical wording also the Belgian one): “What about public services – known here as “Daseinsvorsorge” – like healthcare? This agreement protects them. Unambiguously. Public authorities – local, regional and national – will continue to have full freedom to organise public services as they wish. There is no obligation on anyone to privatise anything. And if services have already been privatised they can be renationalised.”⁵⁷

The actual CETA text, however, is pretty dangerous for public services.

Probably the biggest threat to public services comes from the far-reaching foreign investor rights in CETA’s chapter eight. While Canada, the EU and its member states have inserted a number of public service reservations and exemptions in the CETA, none of these do apply to the deal’s investor-state dispute settlement provisions (chapter 8, section F). And they don’t apply to the most dangerous investor protection standards, like expropriation (article 8.12) and fair and equitable treatment (article 8.10). This makes regulations in sensitive public service sectors such as education, water, health, social welfare, and pensions prone to all kinds of expensive investor claims.

Around the world, public service regulations have been targets of investor-state claims. When, in response to its 2001-2002 economic crisis, Argentina froze utility rates to secure people’s access to energy and water, it was hit by numerous lawsuits. Estonia is

currently defending a €90 million claim over its refusal to increase water rates. And Slovakia has already been ordered to pay €22 million plus interest and legal fees in compensation because, in 2002, the government reversed the health privatisation policies of the previous administration, requiring health insurers to operate on a not-for-profit basis.⁵⁸

Public water operators are not clearly excluded from the CETA. We say ‘no’ to the CETA text.

German association of public water operators⁵⁹

So, when Commissioner Malmström claims that “if services have already been privatised they can be renationalised” under CETA, she misses the point. Because governments could end up paying billions in compensation to foreign investors in return. The decision would be taken by a panel of for profit arbitrators (rather than independent judges), would be based on CETA’s extreme investor privileges (rather than a country’s constitution, which balances the rights of property holders) and could include compensation for loss of expected future profits (which are rarely compensable under most constitutions). Facing such an incalculable risk, governments might not go ahead with their plans to take services back into public hands – even when past privatisations have been failures. This could threaten the growing trend of re-municipalisation of water services (in France, Germany, Italy, Spain, Sweden, and Hungary), energy grids (in Germany and Finland), and transport services (in the UK and France), as well as a potential roll-back of some of the failed privatisations of the UK’s National Health Service (NHS) to strengthen non-profit healthcare providers.

But CETA’s investment chapter is not the only danger for public services. Chapter nine on trade in services, too, includes obligations that could render roll-backs of privatisations illegal and limit Malmström’s acclaimed freedom for public authorities “to organise public services as they wish”. Because the reservations, which Canada, the EU and its member states have put forward with regards to public services, are patchy. And thanks to CETA’s far-reaching negative list approach to liberalising services, every service sector and related measures which are not explicitly excluded from CETA’s commitments, are automatically covered by them.

Three examples show what this could mean in practice⁶⁰:

- The market access rules in CETA’s services chapter may impair efforts to establish adequate staffing levels in hospitals or nursing homes. Regulations defining the minimum number of staff per bed or resident could be interpreted as numerical quotas forbidden under CETA.
- Under CETA, 11 EU member have opted into liberalising long-term care such as residential homes for the elderly (Belgium, Cyprus, Denmark, France, Germany, Greece, Ireland, Italy, Portugal, Spain, and the UK). This could stand in the way of measures protecting the sector against asset-stripping strategies of financial investors like those that lead to the collapse of the care home operator Southern Cross in the UK. An unsustainable sale and leaseback business model had driven Southern Cross into bankruptcy, causing turmoil for thousands of old people.
- In four provinces, Canada has made CETA reservations for public automobile insurance, which, according to consumer groups, benefits drivers through lower costs and better compensation for those seriously injured in accidents. Other provinces could not adopt public auto insurance without violating CETA’s market access obligations.

No amount of spin can hide that these trade agreements provide benefits for the largest corporations on earth but kill jobs and public services for ordinary people.

Rosa Pavanelli, General Secretary of Public Services International (PSI)⁶¹

Does the “joint interpretative instrument” by Canada and the EU contain anything that will protect public services? Again, the answer is no.

Examples of legal language to effectively protect public services exist. In February 2016, the Chamber of Labour Vienna and the European Federation of Public Services Unions (EPSU) published a study containing “model clauses for the exclusion of public services from trade and investment agreements”. One clause starts like this: “This agreement does not apply to

public services and to measures regulating, providing or financing public services".⁶² Then follows a long definition of public services (a term which cannot be found anywhere in CETA, by the way).

The CETA "interpretative instrument" by Canada and the EU, on the other hand, does not incorporate such clear language. Rather, it contains misleading claims which avoid CETA's key problems, while sounding reassuring to people who are not experts on the issue. For example, the instrument's article 4c restates that CETA will not "prevent governments... from bringing back under public control services that governments had chosen to privatise" (while CETA will make these nationalisations potentially too expensive and therefore too risky to pursue). It also states in article 11 that "CETA will not prevent the reversal of a decision to allow the commercial use of water" (while, again, CETA will make these reversals potentially too expensive and therefore too risky to pursue).⁶³

The Declaration downplays the CETA's impediments to public services.

Law professor Gus van Harten, Osgoode Hall Law School, on the joint interpretative instrument⁶⁴

In short, CETA severely limits governments' ability to create, expand, restore, and regulate public services. This threatens people's rights to access services like water, health care, and energy, as well as labour conditions in these sectors. Claiming that CETA protects public services without changing the deal's provisions that work to the contrary is wishful thinking, at best.

Swindle #5: CETA establishes an independent court to settle investor-state disputes

The European Commission claims that CETA establishes an investment court system (transformed into a proper "investment court" by parts of the media), which is "independent" and will settle disputes between investors, Canada, the EU and its member states in an "impartial manner".⁶⁵

CETA's chapter 8, section F on the "resolution of investment disputes between investors and states" grants corporations the right to bypass national courts

and directly file highly enforceable multi-billion euro compensation claims against states in international tribunals. But the tribunals are not judicially independent. Rather, they have a built-in, pro-investor bias.

Investor-state dispute settlement chapters are anomalous in that they provide protection for investors but not for States or for the population. They allow investors to sue States but not vice-versa.

Open letter of ten independent UN experts and special rapporteurs⁶⁶

Under CETA, investor-state lawsuits would be decided by a tribunal of three for-profit arbitrators with vested interests. Unlike judges, they would not have a fixed salary, but be paid per case, with US\$3,000 per day (article 8.27.14, referring to the standard payroll in investment arbitration). In a one-sided system where only the investors can sue, this creates a strong systemic incentive to side with them – because as long as the system pays out for investors, more claims and more money will be coming to the arbitrators.

There are other flaws which make CETA's investment tribunal prone to bias. There is no cooling-off period before or after the appointment of its members and they will neither be banned from sitting as arbitrators in other cases nor from private lawyering (outside the narrow scope of investment disputes, see article 8.30.1). So, they could be part of the small club of investment lawyers who have until now driven the boom in investment arbitration and grown their own business – by encouraging investors to sue and by interpreting investment law expansively to encourage more claims. The selection criteria for the members of the tribunal also exclude expertise in legal areas outside of this club – areas which are less dominated by commercial interests, but might be relevant for rulings, such as national administrative, labour, or environmental law (article 28.27.4).

Citing the flaws in the proposed appointment procedure for the arbitrators and doubts about their financial independence, Germany's largest association of judges and public prosecutors has questioned the investment court system (ICS) as it is included in CETA and also proposed for its twin deal TTIP: "Neither the

proposed procedure for the appointment of judges of the ICS nor their position meet the international requirements for the independence of courts”, the judges wrote in a statement published in February 2016⁶⁷. The European Association of Judges has similar concerns.⁶⁸

What does the EU-Canada “interpretative instrument” do to address these concerns? Exactly nothing.

It merely re-states the claim that CETA “establishes an independent, impartial” tribunal and that “strict ethical rules” have been set for tribunal members to “ensure their independence and impartiality, the absence of conflict of interest, bias or appearance of bias” (article 6f). The instrument also contains the promise that Canada, the EU, and its member states “have agreed to begin immediately further work on a code of conduct to further ensure the impartiality of the members of the Tribunals, on the method and level of their remuneration and the process for their selection. The common aim is to conclude the work by the entry into force of CETA” (article 6f). After five years of negotiations and two years of legal scrubbing of the CETA deal, with ample public input on its investment chapter, how plausible is it that this “further work” will lead to a truly independent dispute settlement system?

This question also has to be asked about the flimsy last-minute promises that the European Commission made to overcome the hold-up of the CETA ratification by the Walloon government. No one in her right mind would sign a contract which states one thing on the basis of promises that something very different will happen in the future. But the Commission seems to try exactly this: make the European Parliament and EU member states ratify an international treaty which will forever bind our societies, on the basis of vague promises that it will be improved in the future.

In a separate statement on the CETA (number 36 in the Council minutes⁶⁹), the Commission promises “further review, without delay, of the dispute settlement mechanism”. It states that CETA arbitrators “will be paid by the European Union and Canada on a permanent basis” (which is not the case under the CETA text); that “the system should progress towards judges who are employed full time” (which is, again, not the case in the CETA text); and that there will be “an obligatory and binding code of conduct” (already indicated at in CETA, but not in the treaty text) for the arbitrators including rules regarding the “disclosure of their past and current activities” and a possible cooling-off period. Finally, “work towards the

establishment of a multilateral investment court” is mentioned, “which will replace the bilateral system established by CETA.”

The corrections to the old investment tribunal system are not enough. The substantive law continues to privilege foreign investors and establishes a parallel legal system undermining the constitutional jurisdiction. Both is unacceptable and has to change.

Hertha Däubler-Gmelin, former German minister of justice⁷⁰

While these promised changes could improve the process to settle investor disputes, not a single word in the Council-Commission statement tackles CETA's flawed substantive investor rules, on which future tribunals would base their decisions. So, the fundamental imbalances and problems of CETA's investment protection would remain: it would empower thousands of corporations to sue governments over legitimate and non-discriminatory public interest measures (a problem which could be worsened through the bizarre Commission proposal to ease the access of small and medium enterprises to the system, including through public co-financing of claims); it could lead to billions in taxpayer money paid to corporations, including for missed future profits that they hypothetically could have earned; it is a sure-fire way to bully decision-makers, potentially curtailing desirable policy-making; it grants exceptionally powerful rights and privileges to foreign investors – rights that no one else in a society has – without any obligations. The proposed multilateral investment court, too, would be exclusively accessible to foreign investors and would not take into account environmental protection, human rights and other non-corporate considerations, which are balanced in constitutional and European legal systems.

The creation of special courts for certain groups of litigants is the wrong way forward.

Deutscher Richterbund, Germany's largest association of judges and public prosecutors⁷¹

So, while CETA proponents praise its system to settle disputes between foreign investors and states for its “independence”, the process is actually heavily slanted

in favour of foreign investors. And the proposal for a multilateral court, a kind of world supreme court for corporations, would further formalise rights for foreign corporations that neither domestic investors nor citizens have.

Swindle #6: CETA will uphold standards to protect people and the environment

According to European Trade Commissioner Cecilia Malmström, CETA will “fully uphold Europe’s high standards”.⁷² On its website, the Commission even claims that “standards and regulations related to food safety, product safety, consumer protection, health, environment, social or labour standards etc. will remain *untouched*” (emphasis added).⁷³

But several chapters in CETA directly contradict those empty words designed to reassure.

The overall thrust of CETA’s chapters pertaining to regulation is to speed up the regulatory process for business but put obstacles in the path of governments attempting to introduce new rules.

Ellen Gould, Canadian Centre for Policy Alternatives⁷⁵

Chapter 12 on domestic regulation commits Canada, the EU, its member states, local and regional governments to adopt or maintain licensing and qualification procedures that are “as simple as possible” for corporations (article 12.3.7), unless they are listed in a complicated annex. The commitment to make the approval process for a nuclear reactor, a pipeline, a food processing plant, or a bank “as simple as possible” is likely to impact future standards. For instance, reforms to strengthen banking supervision and risk management as recommended by the Basel Committee on Banking Supervision could be considered a violation of chapter 12. Nothing in the CETA text balances the simplicity criterion with other values that a society may have – such as ensuring that a proposed pipeline does not destroy the environment or that local residents have a say.⁷⁴

A second threat to European and Canadian protection standards lies in chapter 21 on regulatory cooperation. With the aim of reducing differences in regulation, it establishes a series of dialogues,

consultations and a “Regulatory Cooperation Forum” (article 21.6). Similar ‘voluntary’ dialogues and fora between the United States and the European Union have already had the effect of lowering standards, to the detriment of environmental and health protections.

Take electronic waste for instance. In 1998, a proposal from the European Commission backed by the European Parliament included plans to ban hazardous substances in electronic waste. Through a dialogue process bearing all the traits of regulatory cooperation under CETA, US officials and business lobbyists attacked the proposal, referring to its much vaunted negative impacts on transatlantic trade. In 2002, when the waste directive was adopted, the hazardous substances part had been significantly weakened. It took a court case by the Danish government and the European Parliament to finally take one substance which was to be banned in the original proposal (deca-BDE) off the EU market – ten years after it was first proposed. This is the power of regulatory cooperation.⁷⁶

Ellen Gould from the Canadian Centre for Policy Alternatives has pictured how CETA would “exert enormous pressures on governments to never take... important initiatives”. Referring to the 1997 French ban on hazardous asbestos, she writes: “If CETA had been in place, Canada and its asbestos industry would have had many powerful tools to keep the French ban from ever coming into being. The asbestos industry could have threatened a CETA investor-state suit demanding billions in compensation; the ban could have been opposed by companies using asbestos arguing it had not been established in advance of when they got their licenses;... through CETA’s regulatory co-operation provisions, Canada would have been able to attack the ban in closed door meetings even before French citizens were advised it was being considered. And finally, if these efforts had failed, as a CETA party Canada could have demanded delays in implementation of the ban, giving the asbestos lobby more time to fight it.”⁷⁷

The threat of undue Canadian influence on environmental regulations such as REACH, is real. Canada has previously challenged a number of laws of the EU and its Member States, including REACH.

Center for International Environmental Law (CIEL) on the CETA threat to the EU’s chemical regulation REACH⁷⁸

Does the “joint interpretative declaration” by Canada and the EU protect standards against the CETA attack? Far from it.

The declaration repeats what can be found in the European Commission’s PR on the issue. It claims that “CETA will... not lower our respective standards and regulations related to food safety, product safety, consumer protection, health, environment or labour protection” (article 1d). And it stresses that regulatory cooperation “will be voluntary: regulatory authorities can cooperate on a voluntary basis but do not have an obligation to do so, or to apply the outcome of their cooperation” (article 3).

But the weakening of the electronic waste directive described above, was the result of exactly such a voluntary transatlantic dialogue process. Moreover, if the EU or Canada refuse to cooperate, according to CETA (article 21.2 (6)), they have to be prepared to explain their reasons – an additional pressure for governments to cooperate, whatever the cost for our standards.

So, rather than upholding social, environmental, or health standards, CETA poses a real risk of lowering them. It results in heavy additional burden on regulators and strengthens the role of business lobbyists in the development of regulations, potentially undermining not only the development of much needed regulations, but also our democracies.

A top draw for corporations

The European Commission and the Canadian Government are pitching CETA as “the most forward-looking free trade agreement that Canada or the EU have ever negotiated”.⁷⁹ European Commission President Jean-Claude Juncker has called it “our best and most progressive trade agreement”.⁸⁰

Nothing could be further from the truth.

CETA is a long list of what governments and parliaments are no longer allowed to do. For example, if they want to fight climate change. Or social inequality. Or regulate banks. Or reverse failed privatisations. Or tackle any other of the pressing problems of our times. In fact, CETA will worsen many of these problems. And CETA can force governments to pay when they choose to press ahead with pro-people and environmental policies for which they have been elected by their citizens.

Rather than the “best” trade agreement for the citizens of Canada and the EU, CETA clearly is a top draw for corporations on both sides of the Atlantic. With CETA, they get ample new ammunition to bully governments and local authorities over regulations which could hamper their profits.

CETA’s bumpy road ahead

On a positive note, we can expect many more serious looks at what CETA really means for EU member states and citizens. Because CETA will require ratification in every EU member state. Even if it was rushed through the European Parliament by early 2017, as is currently foreseen, the deal will still require votes in the parliaments of 28 EU member states before it can come into full effect.

So there will be many opportunities to see through the big CETA swindle – and for the deal to be derailed.

Unions, environmental campaigners and consumer organisations will mobilise at every stage to defeat the deal, or prevent parts of it from coming into effect.

Owen Tudor, British Trade Union Congress (TUC)⁸¹

In that context, it is remarkable that, while, in October 2016, the Belgian regions have authorised the federal government to sign CETA, all but the Flemish sub-federal entities are upholding their opposition to CETA, and notably its investor rights. The intra-Belgian statement on the CETA (number 37 in the Council minutes⁸²) states: “The Walloon Region, the French Community, the German-speaking Community, the French-speaking Community Commission and the Brussels-Capital Region do not intend to ratify CETA on the basis of the system for resolving disputes between investors and Parties set out in Chapter 8 of CETA, as it stands on the day on which CETA is signed.” In other words: Belgium would currently not be able to ratify the agreement.

So, apparently, the Belgian regions are still seeing through the fake progressive façade of the CETA. Lets hope, that others will follow. Because behind the façade, CETA remains what it always has been: an attack on democracy, workers, and the environment.

- 1 Interactive map of the European Initiative against TTIP and CETA, <https://stop-ttip.org/>, accessed 10 November 2016.
- 2 See, for example: Civil society groups call on European governments to reject the CETA agreement, 22 September 2016, <https://www.etuc.org/press/civil-society-groups-call-european-governments-reject-ceta-agreement#.WCnXVRSVC0q>; Joint Canadian Trade Union statement on CETA, 15 September 2016, <http://www.nupge.ca/content/13125/joint-canadian-trade-union-statement-ceta>; Small and medium-sized enterprise from across Europe call on European governments to reject the CETA agreement, 23 September 2016, http://kmu-gegen-ttip.de/content/download/1643/41033/file/2016%2009%2023%20SME%20against%20CETA_TTIP%20press%20release.pdf.
- 3 Mehr Demokratie/ Foodwatch/ Campact: Verfassungsbeschwerde. 125.000 gegen CETA, <https://www.ceta-verfassungsbeschwerde.de/>.
- 4 Lawyer Rocco Galati, on behalf of the honourable Paul Helleger, P.C., and others, launches a constitutional challenge against the CETA, in the Federal Court of Canada, 21 October 2016, <http://www.comer.org/content/CETA.pdf>.
- 5 Ankersmit, Laurens: Investment court system in CETA to be judged by the ECJ, *European Law Blog*, 31 October 2016, <http://europeanlawblog.eu/?p=3411>.
- 6 BEUC: CETA fails the consumer crash test, May 2016, http://www.beuc.eu/publications/beuc-x-2016-045_lau_ceta_position_paper.pdf.
- 7 TTIP free zones Europe, <https://www.ttip-free-zones.eu/>, accessed 10 November 2016.
- 8 Parlement Wallon, Motion déposée en conclusion du débat sur les projets de Traité CETA et de Déclaration interprétative du traité, 14 October 2016, http://nautilus.parlement-wallon.be/Archives/2016_2017/MOTION/606_2.pdf.
- 9 National Farmers Union, Open letter to the People of Wallonia and their Representatives in the Walloon Parliament, 17 October 2016, <http://www.nfu.ca/sites/www.nfu.ca/files/2016-10-17%20NFU%20Letter%20to%20the%20People%20of%20Wallonia%20re%20CETA.pdf>.
- 10 Malmström, Cecilia: CETA – an effective, progressive deal for Europe, 19 September 2016, http://trade.ec.europa.eu/doclib/docs/2016/september/tradoc_154955.pdf.
- 11 Steinmeier, Frank-Walter: CETA gives us a chance to set standards. We should take it!, 9 September 2016, http://www.auswaertiges-amt.de/nn_728998/sid_06A4F1F82A5B431B447747B3C59C649F/EN/Infoservice/Presse/Interview/2016/160909-BM-CETA-FR.html?nnm=729012.
- 12 Tweet by Donald Tusk, 13 October 2016, <https://twitter.com/eucopresident/status/786594734277922820>.
- 13 Remarks by President Donald Tusk at the 16th EU-Canada summit, 30 October 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/10/30-tusk-remarks-eu-canada-summit/>.
- 14 EEP press release: CETA: Österreichischer Bundeskanzler beweist fehlendes Verantwortungsbewusstsein, 2 September 2016, <http://www.eppgroup.eu/press-release/CETA:-Kern-beweist-fehlendes-Verantwortungsbewusstsein>.
- 15 Müller, Peter/ Traufetter, Gerald: Gabriel will Europa auf Ceta-Kurs trimmen, *Spiegel online*, 23 September 2016, <http://www.spiegel.de/politik/ausland/ceta-sigmar-gabriel-will-europa-auf-seinen-kurs-einschwoeren-a-1113545.html>.
- 16 The lengthy and deep process of Hearings on CETA in the Walloon Parliament, <http://participer.stop-ttip.be/groups/7/discussions/60>.
- 17 Wesel, Barbara: Opinion: The EU's Walloon CETA disaster, *DW*, 21 October 2016, <http://www.dw.com/en/opinion-the-eus-walloon-ceta-disaster/a-36116145>.
- 18 Quoted in: Becker, Markus: "Ein Schritt zur Zerstörung der EU", *Spiegel Online*, 25 October 2016, <http://www.spiegel.de/politik/ausland/ceta-die-wallonie-blamiert-die-eu-wie-es-jetzt-weiter-geht-a-1118075.html>.
- 19 Dobbin, Murray: 'Trade' agreements and media groupthink, *The Hill Times*, 18 July 2016, <https://www.hilltimes.com/2016/07/18/trade-agreements-and-media-group-think/73864>.
- 20 Council of the European Union: Comprehensive Economic and Trade Agreement (CETA). Statements to the Council Minutes, 27 October 2016, <http://data.consilium.europa.eu/doc/document/ST-13463-2016-REV-1/en/pdf>.
- 21 Van der Loo, Guillaume: CETA's signature: 38 statements, a joint interpretative instrument and an uncertain future, 31 October 2016, <https://www.ceps.eu/publications/ceta%E2%80%99s-signature-38-statements-joint-interpretative-instrument-and-uncertain-future>.
- 22 Sinclair, Scott/ Trew, Stuart: CETA to be signed unchanged, but less likely to be ratified after Wallonian resistance, 28 October 2016, <http://behindthenumbers.ca/2016/10/28/ceta-signed-unchanged-less-likely-ratified-wallonian-resistance/>.
- 23 Krajewski, Markus: Kurzbewertung der Gemeinsamen Auslegungserklärung zum CETA insbesondere mit Blick auf den Investitionsschutz, 14 October 2016, https://www.gruene-bundestag.de/fileadmin/media/gruenebundestag_de/themen_az/EU-USA-Freihandelsabkommen/Kurzbewertung_der_Gemeinsamen_Auslegungserklärung_zum_CETA.pdf, p.4.
- 24 Sinclair, Scott/ Trew, Stuart, see endnote 22.
- 25 Ibid.
- 26 Tweet by Simon Lester, 6 October 2016, <https://twitter.com/snlester/status/784013175742136320?lang=de>.
- 27 European Commission: European Commission proposes signature and conclusion of EU-Canada trade deal, 5 July 2016, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1524&title=European-Commission-proposes-signature-and-conclusion-of-EU-Canada-trade-deal>.
- 28 Joint Canadian Trade Union statement on CETA, see endnote 2.
- 29 Protocol on Dispute Settlement and Institutional Mechanisms for Chapter Twenty-Two (Trade and Sustainable Development) and Twenty-Three (Trade and Labour), 15 September 2016, http://www.s2bnetwork.org/wp-content/uploads/2016/09/ceta_amendment_4of4_protocol_labour_sustainability.pdf.
- 30 Tudor, Owen: Korea's broken promises sound alarm over OECD membership & trade agreements, 24 November 2015, <http://strongerunions.org/2015/11/24/koreas-broken-promises-sound-alarm-over-oecd-membership-trade-agreements/>.
- 31 Resolution of the SPD Party Convention, 19 September 2016, http://www.bernd-lange.de/imperia/md/content/bezirkhannover/berndlange/2016/spd_resolution_english.pdf/spd_resolution_english.pdf, p.9.
- 32 Trade Justice Network, Response to Joint Interpretative Declaration on CETA, 13 October 2016, <http://tradejustice.ca/en/response-to-joint-interpretative-declaration-on-ceta/>

- 33 Tudor, Owen: #CETA: zombie trade deal is no recipe for #Brexit, 30 October 2016, <http://touchstoneblog.org.uk/2016/10/ceta-zombie-trade-deal-no-recipe-brexit/>
- 34 Making Sense of CETA, 2nd edition, September 2016, https://corporateeurope.org/sites/default/files/attachments/making-sense-of-ceta_22092016.pdf.
- 35 Kohler, Pierre/ Storm, Servaas: CETA without blinders: how cutting 'trade costs and more' will cause unemployment, inequality and welfare loss, September 2016, http://www.ase.tufts.edu/gdae/policy_research/ceta_simulations.html.
- 36 AFL-CIO: NAFTA at 20, March 2014, http://www.aflcio.org/content/download/121921/3393031/March2014_NAFTA20_nb.pdf.
- 37 Kohler, Pierre/ Storm, Servaas: The CETA Trade Pact Will Add to the Groundswell of Discontent: Why We Need More Informed Decision-Making, 7 October 2016, <http://www.nakedcapitalism.com/2016/10/the-ceta-trade-pact-will-add-to-the-groundswell-of-discontent-why-we-need-more-informed-decision-making.html>.
- 38 European Commission, see endnote 27.
- 39 Making Sense of CETA, see endnote 34.
- 40 *Le Monde*: Nicolas Hulot : «Le traité de libre-échange avec le Canada doit devenir climato-compatible», 13 October 2016, http://www.lemonde.fr/idees/article/2016/10/13/signons-un-traite-de-libre-echange-avec-le-canada-qui-ne-menace-pas-le-climat_5012711_3232.html#ViBQJlCLcDq0gVFT.99.
- 41 Foodwatch: CETA-Zusatzklärung: EU trickst beim Vorsorgeprinzip, 14 October 2016, <http://www.foodwatch.org/de/presse/pressemitteilungen/ceta-zusatzklaerung-eu-trickst-beim-vorsorgeprinzip/>.
- 42 See also: Stoll, Dr. iur. Peter-Tobias and others: CETA, TTIP and the EU precautionary principle, June 2016, https://www.foodwatch.org/fileadmin/Themen/TTIP_Freihandel/Dokumente/2016-06-21_foodwatch-study_precautionary-principle.pdf.
- 43 Ibid, p.7.
- 44 Council of the European Union, see endnote 20.
- 45 Sinclair, Scott/ Trew, Stuart, see endnote 22.
- 46 Van der Loo, Guillaume, see endnote 21.
- 47 Greenpeace: Greenpeace-Studie: Umwelt spielt für CETA immer noch keine Rolle EU-Parlament kann Handelsvertrag zwischen EU und Kanada aufhalten, 4 November 2016, <http://www.presseportal.de/pm/6343/3474208>.
- 48 European Commission: CETA - a trade deal that sets a new standard for global trade, 29 October 2016, http://europa.eu/rapid/press-release_MEMO-16-3580_en.htm.
- 49 For a more detailed explanation of how CETA's investment provisions would play out in practice, see: Corporate Europe Observatory and others: Trading away democracy, September 2016, https://corporateeurope.org/sites/default/files/ceta-trading-away_democracy-2016en.pdf.
- 50 For how exactly these and other cases could be filed – and won – under CETA, see: Corporate Europe Observatory and others: Investment Court System put to the test, April 2016, <https://www.corporateeurope.org/international-trade/2016/04/eu-investment-proposal-won-t-prevent-corporate-attacks-health>.
- 51 Legal statement on investment protection in TTIP and CETA, 17 October 2016, <https://stop-ttip.org/blog/legal-statement-on-investment-protection-in-ttip-and-ceta/>.
- 52 Van Harten, Gus: The EU-Canada Joint Interpretive Declaration/Instrument on the CETA, 8 October 2016, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2850281, p. 2, 6.
- 53 Ibid, p.3.
- 54 For more explanations, see: ibid.
- 55 For a more detailed critique of these and other formulations in the interpretative instrument, see: ibid; Seattle to Brussels Network and others: Joint Interpretive Declaration on CETA. Unpacking the "clarifications" on investment protection, October 2016, <http://www.s2bnetwork.org/wp-content/uploads/2016/10/Analysis-of-Investment-part-FINAL-interpreative-declaration-CETA-11-oct-1.pdf>.
- 56 DGB: Investitionsschutz in TTIP & anderen Verträgen, 24 February 2016, <http://www.dgb.de/themen/++co++f0ecc59a-e1e9-11e5-98b7-52540023ef1a>, p.2.
- 57 Malmström, Cecilia: CETA – Making an Informed Decision, 14 September 2016, http://trade.ec.europa.eu/doclib/docs/2016/september/tradoc_154949.pdf; Malmström, Cecilia: CETA: An effective and progressive deal for Belgium and Europe, 20 September 2016; http://trade.ec.europa.eu/doclib/docs/2016/september/tradoc_154956.pdf.
- 58 For these and other cases, see: Public Services International: Investment Court System (ICS): The wolf in sheep's clothing, July 2016, <http://www.world-psi.org/en/investment-court-system-ics-wolf-sheeps-clothing>.
- 59 AöW: Wasserwirtschaft im Sog des Freihandels – CETA, August 2016, http://www.aeww.de/media/Publikationen/Stellungnahmen/2016/AoeW_Positionspapier_CETA_Final_red_ueberarb_August_2016.pdf, p.6.
- 60 For these and other examples, see: Corporate Europe Observatory and others: Public services under attack through TTIP and CETA, October 2015, <https://corporateeurope.org/international-trade/2015/10/public-services-under-attack-through-ttip-and-ceta>; Canadian Centre for Policy Alternatives and others: Making Sense of the CETA, September 2014, https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/09/Making_Sense_of_the_CETA.pdf.
- 61 PSI: PSI welcomes French call to halt TTIP negotiations and asks 'what about CETA?', 30 August 2016, <http://www.world-psi.org/en/psi-welcomes-french-call-halt-ttip-negotiations-and-asks-what-about-ceta>.
- 62 Krajewski, Markus: Model clauses for the exclusion of public services from trade and investment agreements, February 2016, http://www.epsu.org/sites/default/files/article/files/Study%20M%20Krajewski_Model%20clauses%20for%20the%20exclusion%20of%20public%20services_2016.pdf, p.9.
- 63 For a more detailed analysis of the instrument's sections on public services (based on its first draft), see: Sinclair, Scott: Flimsy CETA declaration leaves public services, water policy vulnerable in Canada-EU deal, 14 October 2016, <http://behindthenumbers.ca/2016/10/14/flimsy-ceta-declaration-leaves-public-services-water-policy-vulnerable-canada-eu-deal/>.
- 64 Van Harten, Gus, see endnote 52, p.2.
- 65 European Commission: Investment provisions in the EU-Canada free trade agreement (CETA), http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151918.pdf, p.1.

- 66 UN experts voice concern over adverse impact of free trade and investment agreements on human rights, 2 June 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E@>
- 67 Deutscher Richterbund, "Stellungnahme zur Errichtung eines Investitionsgerichts für TTIP – Vorschlag der Europäischen Kommission vom 16.09.2015 und 12.11.2015", Nr. 04/16, 4 February 2016, <http://www.drb.de/cms/index.php?id=952>, unofficial translation: https://www.foeeurope.org/sites/default/files/eu-us_trade_deal/2016/english_version_deutsche_richterbund_opinion_ics_feb2016.pdf.
- 68 Statement from the European Association of Judges (EAJ) on the proposal from the European Commission on a new investment court system, 9 November 2015, <http://www.iaj-uim.org/iuw/wp-content/uploads/2015/11/EAJ-report-TIPP-Court-october.pdf>.
- 69 Council of the European Union, see endnote 20.
- 70 Hertha Däubler-Gmelin: CETA und kein Ende?, *Politik und Kultur*, <https://www.kulturrat.de/wp-content/uploads/2016/10/puk06-16.pdf>, p.12; translation: Pia Eberhardt.
- 71 Deutscher Richterbund, see endnote 67.
- 72 European Commission, see endnote 27.
- 73 European Commission: Factsheet: Main elements of CETA, February 2016, http://europa.eu/rapid/press-release_MEMO-16-445_en.htm.
- 74 See the alarming analysis of the chapter in Making Sense of CETA, see endnote 34.
- 75 Gould, Ellen: Futureshock: CETA and democratic governance, 14 October 2016, <http://behindthenumbers.ca/2016/10/14/futureshock-ceta-democratic-governance/>.
- 76 For this and other examples from the EU-US context, see the analysis of CETA's regulatory cooperation chapter in Making Sense of CETA (see endnote 34) and: Corporate Europe Observatory/Lobbycontrol: Dangerous Regulatory Duet – How transatlantic regulatory cooperation under TTIP will allow bureaucrats and big business to attack the public interest, January 2016, <https://corporateeurope.org/international-trade/2016/01/dangerous-regulatory-duet>.
- 77 Gould, Ellen, see endnote 75.
- 78 Center for International Environmental Law to Minister-President Margette, 19 October 2016, <http://www.ciel.org/wp-content/uploads/2016/10/CIEL-letter-to-Mr.-Margette.pdf>.
- 79 CETA: statement by the European Commissioner for Trade and Canada's Minister of International Trade, 18 September 2016, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1541&title=C%20ETA-statement-by-the-European-Commissioner-for-Trade-and-Canadas-Minister-of-International-Trade>.
- 80 European Commission, see endnote 27.
- 81 Tudor, Owen, see endnote 33.
- 82 Council of the European Union, see endnote 20.

It is high time that Europe's and Canada's policymakers wake up to the fact that freeing trade does not necessarily create extra jobs but instead carries a high risk of welfare losses, heightened inequality and fragmentation – all sources feeding the groundswell of discontent.

Economists Servass Storm & Pierre Kohler



Corporate Europe Observatory (CEO) is a research and campaign group working to expose and challenge the privileged access and influence enjoyed by corporations and their lobby groups in EU policy making. CEO works in close alliance with public interest groups and social movements in and outside of Europe to develop alternatives to the dominance of corporate power.

www.corporateeurope.org