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**Unifor submission to  
Standing Committee on  
International Trade (CIIT)  
hearings regarding Bill C-  
30, an Act to implement  
the Comprehensive  
Economic and Trade  
Agreement (CETA)  
between Canada and the  
European Union and its  
Member States and to  
provide for certain other  
measures**

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November 30, 2016

## **About Unifor**

Unifor is Canada's largest labour union in the private sector, representing more than 310,000 members in every major sector of the economy. Unifor was founded in September, 2013 by its predecessor unions the Canadian Auto Workers union (CAW-Canada) and the Communications, Energy and Paperworkers Union of Canada (CEP).

For more information, visit: [www.unifor.org](http://www.unifor.org)

## **Introduction**

Unifor welcomes the invitation to submit its views on Bill C-30, an omnibus bill that facilitates the implementation of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA).

For the record, Unifor had originally filed a request (dated November 9) to present its views on Bill C-30 directly to the Standing Committee on International Trade (CIIT). Unifor has not received an invitation to participate as a witness in the formal hearings that began on November 15<sup>th</sup>. On November 22<sup>nd</sup>, we received an email from the Clerk of the CIIT providing us an opportunity to submit our views in the form of a written brief, and were encouraged to keep our submission to less than 10 pages. A subsequent conversation with the Clerk confirmed that Unifor would not be called as a witness.

By the time the Committee begins its clause-by-clause review of Bill C-30 (tentatively scheduled for December 6) just six consultative meetings would have been held – involving less than two dozen witnesses and no open consultation with the public. This is in stark contrast to the federal government's broad consultative effort to study the Trans-Pacific Partnership, an equally controversial trade agreement that, in many respects, is less expansive (i.e. does not directly interfere with as many facets of Canada's economy, particularly with respect to sub-national governments and crown agencies) than the proposed CETA.

One would think such a complex deal as the CETA would warrant even greater scrutiny and consultation. Instead, there is a noticeable sense of urgency on the part of the federal government to ratify and implement the agreement, despite obvious and outstanding public concerns – including those raised previously by Unifor – as well as what is expected to be a lengthy ratification process undertaken by the European Union. In truth, there is no urgency nor is there an advantage to Canada in circumventing a needed public dialogue on the CETA and to move quickly on its ratification.

### **Unifor's stated position on the CETA**

Shortly after the original CETA trade pact between Canada and the EU was signed "in-principle" in 2013, Unifor President Jerry Dias appeared before the CIIT to present the union's general views and concerns about the deal, and offered a set of recommendations for consideration.

Unifor has been consistent in its criticism of the CETA since leaked negotiating texts of the agreement had been made public after talks began in 2009.

In his November 19 presentation to the Committee, Mr. Dias suggested that the lack of transparency during CETA talks and the lack of meaningful engagement with Canada's labour unions, indigenous nations and broader civil society meant trade negotiations were flawed from the start.

Mr. Dias also expressed concerns over a proposed investor-state dispute settlement mechanism and the cost implications of drug patent reform.

Further, Mr. Dias stated that the inclusion of sub-national governments within the scope of the deal essentially pushes Canada into uncharted waters. Prior to this agreement, sub-national government entities – including cities and towns – were mainly excluded from the terms set under international trade treaties. This exclusion offered a significant degree of governing authority, despite any contrary provisions embedded in the treaties, including on matters of public service protection, regional development policies and procurement. The CETA reverses this historical practice, despite public protestations from dozens of municipal councils, school boards and districts across the country.

In addition to these public policy criticisms, Unifor has expressed reservations on the CETA's value for Canada's overall trade performance. Of particular importance is the anticipated negative effect bilateral tariff elimination with Europe will have on workers in Canada's trade-dependent goods producing sectors. Past estimates peg manufacturing and processing job losses at up to 150,000, as current unfavourable trade imbalances are expected to amplify – wherein tariff elimination, and other macroeconomic factors, cause Canada's resource exports to the EU to grow along with the continued growth of imports in high-value finished goods. Such a scenario is plausible (Canadian manufacturing exports to the EU have stagnated since the 2009 recession, while imports have risen by 40 per cent) and would only exacerbate what is currently a near \$40-billion trade deficit in manufactured goods.

On these core concerns, neither the subsequent amendments made to the CETA text (i.e. reforms to the investor-state dispute settlement mechanism, adoption of the "Joint Interpretive Instrument") nor the contents of Bill C-30 offer any indication that these have been sufficiently addressed.

## **Unifor's previous recommendations to the CIIT**

In our submission to the CIIT on November 19, 2013, we offered three modest recommendations to the Committee<sup>1</sup>, for its consideration:

1. That the federal government release the full text of the deal and provide an opportunity for greater public consultation, with a more informed view of its contents;
2. That the CETA be ratified only after both the House of Commons and each provincial and territorial government vote in favour of it;
3. That special investor-state dispute settlement provisions and extended drug patents be entirely removed from the deal.

It is our view that none of these recommendations have been sufficiently addressed.

### **Recommendation 1: opportunity for additional public dialogue**

As was mentioned in our submission to the CIIT in November 2013 we appreciated the opportunity to share our views on the CETA. Our participation in Committee hearings was as one of 88 total invited witnesses that presented over the course of 19 meetings stretching from November 2013 to June 2014<sup>2</sup>. The Committee presented its summary report of the hearings to the House of Commons on June 18, 2014.

Unfortunately, the entire stretch of review meetings took place while the actual CETA text had still not been made public. In fact, the agreement text was finally released in September 2014 – nearly one year after the agreement had been signed “in-principle” (and 3 months after the Committee’s report was tabled).

Our view was that any sufficient review and study of the CETA text would require the public to have access to the *actual* text. Instead, witnesses and citizens were made to form their opinion on a government-published summary of the CETA’s contents, as well as unconfirmed leaked texts of the deal’s chapters.

Whether or not the summaries served to sufficiently portray all of the key elements of the deal, it is procedurally awkward to have conducted a review of the CETA, invited expert witnesses to provide testimony, and then table a report audaciously recommending: *“That the Government of Canada take all possible actions to ensure that the provisions in the comprehensive economic and trade agreement between Canada and the European Union enter into force as quickly as*

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<sup>1</sup> See Jerry Dias testimony to the CIIT, on behalf of Unifor (November 19, 2013): <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6307043&Language=E&Mode=1&Parl=41&Ses=2#Int-8136589>

<sup>2</sup> A previous interim Committee review was also conducted in 2012, while negotiations were still underway.

*possible” and “That the Government of Canada continue to pursue additional comprehensive trade agreements to open new markets and provide opportunities for growth for Canadian businesses.”*

Frustratingly, since the CIIT’s last report was released there have been notable changes to the deal itself, including reformations to the investor-state dispute mechanism (following the creation of a new Investment Court System, or ICS) as well as a new “Joint Interpretive Instrument” that would be used to guide the interpretation of CETA’s provisions in future disputes.

Additionally, negotiations between the US and EU for a proposed Trans-Atlantic Trade and Investment Partnership (TTIP) have reportedly broken down. In various instances (such as the negotiated ‘derogation’ provisions guiding exports of Canadian autos), the negotiated terms of the CETA presumed that an eventual TTIP agreement would be signed.

Perhaps most significantly, Britain’s relatively recent decision to leave the European Union creates a much larger question around the purpose of a CETA, since Britain represents the lion’s share of Canadian exports to the total EU market. Take Britain out of the equation and the deal yields fundamentally different results for Canada.

Despite these significant differences to the latest iteration of the CETA, as compared to the 2013 “agreement-in-principle”, the CIIT has opted not to undertake a proper study of the final agreement text, despite the fact that other groups have ventured to conduct more comprehensive research and analysis<sup>3</sup>. In haste, the federal government has prepared itself to sign into law an implementation bill for a trade agreement that has not, in its entirety, been subjected to full public scrutiny, review, study and oversight. The only “study” that has been conducted by the Committee was based on an out-of-date summary for an “agreement-in-principle.” Surely, such a scenario would be deemed unacceptable in any modern democracy.

### **Recommendation #2: giving voice to sub-national governments**

It would be unprecedented for Canada’s federal government to require each provincial and territorial government to ratify the provisions of a trade treaty, as a condition of it coming into force – however, it is undeniable that the CETA is an extraordinary trade deal.

Despite various positive public statements for the CETA issued by current and former provincial leaders<sup>4</sup>, the deal will have a significant impact on the work of current and future provincial

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<sup>3</sup> See the Canadian Centre for Policy Alternatives, “Making Sense of the CETA” 2<sup>nd</sup> Edition: <https://www.policyalternatives.ca/publications/reports/making-sense-ceta-2016>

<sup>4</sup> For example, see former Quebec Premier Jean Charest comments in: <http://news.nationalpost.com/news/canada/charest-urges-trudeau-to-call-merkel-hollande-over-ceta-with->

governments, as well as municipal and regional governments. Whether or not select officials expressed concern over the CETA (such as Mayor Derrick Corrigan of the City of Burnaby<sup>5</sup>) or support for the deal (such as Mayor Savage of the Halifax Regional Municipality<sup>6</sup>), does not remove the fact that affected sub-national governments ought to have had the opportunity to discuss and vote on its provisions. Such an initiative would have rendered a very rich and thorough understanding of the deal.

Without drawing comparisons between Canada's constitutional federation and the complex constructs of the 28 member European Union, it is apparent that each member state (and recognized regional government authority) will have an opportunity to further carefully assess and dissect the CETA over the course of the ratification process. Unfortunately, Canada's sub-national governments will not have the same opportunity – even if the federal government was under no constitutional requirement to do so.

Such an initiative would also have enhanced the public's understanding of the deal, engaged citizens more closely on how international trade matters and intersects with them in their daily lives. It would have helped improve on the lack of transparency that plagued negotiations, and opened up space for more organizations to have their say.

Perhaps most frustrating is that this concrete recommendation was not even addressed in the CIIT's final report to the House of Commons. Bill C-30 offers no consideration of sub-national government ratification or debate.

### **Recommendation #3: remove the most controversial aspects of the deal, ISDS and extended patent laws**

Much has been written about the anti-democratic nature of extrajudicial dispute settlement mechanisms that enable private investors to sue governments for lost profits (in some cases hypothetical profits) resulting from unfavourable laws or policies. Canada has had a poor track record in facing down corporate lawsuits under the NAFTA model of investor-state dispute, outlined in its Chapter 11. Unifor joined a chorus of witnesses expressing concern over the inclusion of investor-state provisions in the CETA, as well as a growing opposition movement among EU governments and civil society. Despite the CIIT's recommendation in its 2014 report that Canada continue to negotiate "strong investor-state dispute settlement and investment

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[europes-credibility-at-stake and B.C.](#) Trade Minister Teresa Wat comments in:

<http://www.straight.com/news/818356/bc-international-trade-minister-teresa-wat-lauds-ceta>

<sup>5</sup> See Mayor Corrigan's testimony to the CIIT (February 3, 2014):

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6402654&Language=E&Mode=1&Parl=41&Ses=2#Int-8210678>

<sup>6</sup> See Mayor Savage's testimony to the CIIT (November 26, 2013):

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6334178&Language=e&Mode=1&Parl=41&Ses=2#Int-8153471>

protection measures into trade agreements,” public opposition to these provisions hit a fever pitch – prompting both governments to propose reformations to the originally negotiated system. Bill C-30 proposes to lay the necessary groundwork for these investment protections to be implemented, despite the CIIT hearing testimony that sufficient investor protections already exist in Canadian and European national courts.<sup>7</sup>

Unifor also joined a chorus of voices opposing changes to Canadian patent laws, particularly those measures that would affect the price of brand name pharmaceuticals that some have predicted would add an additional \$850 million to \$1.6 billion per year to the cost of medicines<sup>8</sup>. Over the course of CIIT hearings, then International Trade Minister Ed Fast publicly committed to compensate provinces for any increased drug costs<sup>9</sup>, but there has been no confirmation as to whether (and how) this promise will be delivered, including under the Trudeau government. Bill C-30 outlines changes to a series of legislative texts affecting patent laws, yet is silent on any compensatory measures. It is our view the neither of these two provisions need be included in any final version of the deal. It is also our view that the CETA contains a wide range of provisions that make it impossible for Unifor to support, including its treatment of public services and its anticipated impact on multiple sectors of our industrial economy. However, we imagine that stripping these two measures from the deal will help make the CETA, at the very least, less objectionable, and should signal that such provisions are non-starters in any future trade negotiations undertaken by Canada.

### **Concluding remarks and reflections on the process**

Bill C-30 represents the culmination of seven years of negotiations between Canada and the European Union. Procedurally (and legislatively) it would appear that the CETA has neared the end of the line.

However, recent events particularly in Europe suggest that CETA is far from a *fait accompli*. Commitments wrested by the small Belgian region of Wallonia contain measures that could still allow them to stymie ratification. The Walloons have already made clear that investor-state provisions, in their current form, will not suffice. Growing political unrest in various other nations around the CETA, and trade deals more broadly, have heightened public sensitivities.

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<sup>7</sup> See Gus Van Harten testimony (February 25, 2014):

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6441773&Language=e&Mode=1&Parl=41&Ses=2#Int-8242043>

<sup>8</sup> See Lexchin and Gagnon, CETA and Pharmaceuticals Impact of the trade agreement between Europe and Canada on the costs of patented drugs, <https://www.policyalternatives.ca/publications/reports/ceta-and-pharmaceuticals> (October, 2013)

<sup>9</sup> See Ed Fast testimony (November 7, 2013):

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6293140&Language=e&Mode=1&Parl=41&Ses=2#Int-8125980>

Citizens are demanding demonstrable value in trade arrangements, and see treaties such as the CETA as unfairly benefitting large corporate investors, at the expense of working people, as well as undermining our democratic rights and the environment.

This review of Bill C-30 should provide some space for reflection by Committee members – a reflection on seven years of missed opportunities to sufficiently engage the public in a trade discourse, and of only partially hearing the concerns of critical voices who have expressed a desire to see Canada’s trade program undergo a major realignment of principles and priorities.

Over the past year, we have witnessed a popular backlash against increasingly poor economic conditions and bleak future prospects. Much of that backlash is tied to the broken promises of boundless prosperity ushered in by free trade deals, such as the CETA. Blaming all of our collective woes solely on free trade pacts might be irrational, but so too is suggesting that free trade can only be a sure-fire fix to stagnant economic growth.

As noted above, it is clear to us that – in fact – Canadians have not had an opportunity to clearly debate and discuss the CETA. At no point has the CIIT undertaken a study of the full agreement, at a time when the public has had access to the full text. And while this would have been the most appropriate time to conduct such a thorough review, the current hearings have been limited to assessing Bill C-30 specifically. It is therefore impossible, under these terms, to undertake a deep dive into the text.

This is disappointing. And after what has been a very extensive and multi-faceted public discussion over the equally controversial Trans-Pacific Partnership trade accord, the federal government’s half-hearted approach to CETA doesn’t live up to its own impressive consultative standard. Opposition Trade Critic and CIIT Vice-Chair Tracey Ramsay has also pointed out that by not tabling a copy of the CETA treaty in addition to an explanatory memorandum at least three weeks before Bill C-30 was presented, the federal government has violated current government policy on the tabling of trade treaties. Apparently, this has been met with no reprisals.

There is a danger in what appears to be a hasty approach to implement a trade deal, especially in light of the current political-economic climate, and rise of populist political figures like Donald Trump in the U.S. The federal government would be far wiser to proceed with caution, and sincere concern for the criticisms being put forward.

There is still time for a more robust dialogue on the CETA. As Bill C-30 is debated among Committee members, we urge that the CIIT:

- Issue a recommendation to the House of Commons to extend the consultative period on reviewing the CETA;



- Further recommend expanding the parameters of this extended review to include the entire final deal, including the latest ISDS reforms and Joint Interpretive Instrument; and
- Further recommend an opening up the consultation to the broader public.

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