

## EP plenary vote on 15 February on CETA: Joint briefing from the European Trade Union Federations



### **Joint briefing for EP plenary vote on 15 February on CETA Common concerns from the European Trade Union Federations (ETUFs)**

(3 February 2017) The European trade union federations share a number of common concerns about CETA as it is now being proposed to the European Parliament. The Joint Interpretative Instrument (JII) does not go far enough in clarifying or adequately addressing these concerns. For these reasons, we ask you not to consent in the plenary vote on 15 February to CETA's ratification.

The key concerns are summarized as follows:

#### **Public services are included in CETA**

The European Parliament has recently made firm recommendations to the

Commission that public services be excluded in their entirety from bilateral and wider international trade deals, irrespective of how those services are financed and organised. The patchwork of limitations for public services offered by CETA does not do the job in ensuring comprehensive protections for current and future public services. While the CETA Annexes include a number of limitations for public health, education and other sectors of public services, such limitations only provide a narrow shield for public services as they are delimited to so-called “publicly-funded”, a term not covered by the EU Treaty provisions. No clear line is drawn between publicly- and privately funded or provided services and it remains unclear to what extent exemptions based on this wording would apply.

A proper exemption would cover public services independent of how they are financed and supplied. Indeed, the EU has promoted a model of public services that precisely takes no account of the ‘public’ or ‘private’ nature of the service provider, favouring instead the protection of the ‘general interest’. Furthermore, there is not a single reference to any exception for public services or Services of General Interest from the scope of the agreement. In CETA the EU has made significant commitments in privately funded services, including in sectors of public services. Those commitments vary slightly between Member States due to the specific exemptions taken. As a result, the EU and its Member States are effectively opening the door to foreign for-profit providers and are extending new rights to private investors that go beyond any existing trade commitments.

### **CETA is the first EU agreement with a ‘negative list’ approach for services commitments**

This means that all services will be subject to market liberalisation unless an explicit exception is made and marks a radical departure from the positive lists used so far in EU trade deals. The negative list approach thus expands the scope of trade agreements and makes it more difficult to anticipate and regulate new services that emerge in the future.

CETA’s ‘standstill’ and ‘ratchet’ mechanisms will then serve to lock-in present and future liberalisation and thereby limit future efforts by governments to extend regulation or renationalise services, even when past liberalisations have proven to be failures and when it is in the public interest to take the services back to public provision. Such provisions stifle the development of good governance and local responsibility, especially for local and regional governments. We remind MEPs of the European Parliament’s rejection of standstill and ratchet clauses in its

recommendations on the Trade in Services Agreement (TiSA), precisely because they undermine democratic processes and accountability.

**CETA may restrict universal service obligations being introduced in public utilities such as post, electricity, telecoms and urban transport.**

These obligations are necessary to guarantee citizens universal access to basic services at affordable prices. CETA will also limit the freedom of public utilities to produce and distribute energy according to public interest goals, for example, by supporting renewables to combat climate change. Very few Member States have explicitly reserved their right to adopt certain measures with regards to the production of electricity.

**CETA contains far-reaching investment protection provisions**

While CETA's revised investor protection mechanism (Investment Court System – or ICS) is an improvement on the toxic and much-criticised Investor-State Dispute Settlement (ISDS), it nonetheless fails to meet the mark. Under ICS, investors will still be granted special rights over other groups in society to sue governments for policies that threaten their profits or business interests. This right will also apply to the many US companies that have operations in Canada. Previous attempts to regulate public services have already been targets of ISDS claims by private providers, and CETA threatens to continue and expand this trend – rendering sectors including education, water, health, social welfare and pensions vulnerable to a range of investor attacks. The new ICS also fails to address previous concerns with the ISDS system, notably regarding the financial interest of arbitrators, the ability to make multiple claims, the absence of usual judicial mechanisms of restraint such as deference or proportionality tests, and vague protection standards for “indirect expropriation” and “fair and equitable treatment”, all of which continue to leave the ICS open to abusive interpretation.

**CETA is weak on human rights, including workers' rights**

Not only does CETA not contain a clause saying that the respect for human rights is an essential element of the agreement, the sustainable development chapter does not include binding and enforceable measures to ensure ILO core Conventions on labour rights are respected. Monitoring mechanisms are weak, which makes it impossible to guarantee equal pay for equal work and risks leading in reality to increased social dumping and labour rights violations. Together with mode 1 stipulations for online services abroad, this will create fierce price competition and a downward spiral of working conditions across the EU and Canada. Furthermore, the

public procurement provisions do not include obligations to respect labour and environmental standards nor promote the use of social and environmental criteria in public tenders. In addition, the provisions on regulatory cooperation risk to compromise future progress to improve existing rights and protections. The JII is also weak in this respect, claiming only that CETA will not lower labour protection standards, but making no commitment to protecting and actually improving employment, health, social and environmental standards – which would help make CETA a much more progressive and ambitious trade agreement than it currently is.

### **CETA is not a progressive and fair trade agreement**

There is growing public debate on trade policy. It has become clear that free trade agreements can no longer be dealt with from purely a business perspective. Instead they need to integrate broader societal issues such as employment, social cohesion and sustainable development. CETA does not do this and therefore cannot become a blueprint for the next generation of agreements.

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