CUPE

Local governments feel impacts of international trade deals

Canadians elect municipal politicians to govern our communities in the public interest. However, local elected representatives can find their hands tied by international trade agreements that are signed by upper levels of government with little or no consultation with the public, such as the United States-Mexico-Canada Agreement (USMCA). We all experience the impact of these agreements in the communities where we live and work. Trade agreements should be negotiated transparently and with full public consultation.

Status of CETA

For years, CUPE and other civil society organizations have raised the alarm about CETA, the Comprehensive Economic and Trade Agreement between Canada and the European Union. The Canadian government has signed CETA despite concerns voiced by millions of people who understand this agreement and others like it are mostly about expanding corporate rights. CETA came into force provisionally in Canada on September 21, 2017.

It's important for municipal leaders to understand the "provisional" nature of CETA's implementation in Canada. Key parts of the deal will only come into force once all 28 EU national governments have ratified the pact. Many countries and subnational governments have questioned the benefits of CETA. Belgium asked the Court of Justice, the EU's top court, to interpret if the pact's investment and financial services clauses, specifically the investor-state dispute settlement system, caused jurisdictional issues. The most troubling part of CETA – the Investor Court System, which would allow private corporations to sue governments, and other investment protection chapters – is not in effect. This is a major victory for the public interest.

However, the provisional CETA will still fully cover Canadian municipalities. Local governments will be subject to most of the terms and conditions negotiated between the EU and Canada regarding procurement of goods and services. Public procurement is one of the most sensitive areas in CETA and we fear that many European providers are currently lining up to bid on municipal tenders and contracts.

If the Investor Court System comes into force, its rules will allow private corporations to bypass our public courts to directly sue governments – including municipal governments – over legislation, regulations or policies that are made in good faith and in the public interest, but which are seen to be interfering with a corporation's future profits. The Investor Court System is like the Investor State Dispute Settlement process (made infamous in NAFTA's Chapter 11). Both will allow private tribunals to rule on legislation enacted by democratically elected officials.

Any private extra-judicial arbitration system gives transnational corporations excessive power to undermine the authority of elected officials to enact laws. Our elected representatives should make regulations and policies that protect the public interest, including on the environment, labour rights, health and safety standards, climate policy, and the sustainability and safety of our food supply. Elected officials should not have to fear that their decisions might trigger lawsuits from investors in special courts outside our legal system.

Status of the TPP

The Trans-Pacific Partnership was signed on February 4, 2016, but never came into effect because the US withdrew its signature. It moved on without the US and was renamed the "Comprehensive and Progressive" Trans-Pacific Partnership (CPTPP) and came into effect on December 30, 2018. Canada will begin negotiations to include subnational government procurement in the TPP within three years of the agreement coming into force.

Side letters attached to the CPTPP purport to give Canada extra protections. For instance, a cultural side letter allows the federal and provincial governments to impose sales taxes on cross-border digital media providers, provided the same taxes are levied on domestic digital media corporations. Quebec has already moved to do so.

Beyond the side agreements, major concerns remain that the massive agreement gives investors the power to challenge laws that impact their investments and profits in signatory countries where they are doing business.

The original TPP generated anger among citizens in many countries. Notably, it was a wedge issue in the US election, leading to the US government pulling out of the TPP. Governments should heed these warning signs. People are tired of being told trade agreements will solve the problems of rising inequality.

NAFTA renegotiation

The final trade deal for municipal officials to be concerned about is the renegotiation of NAFTA, now called the US-Mexico-Canada Agreement (USMCA). The United States insisted on renegotiating NAFTA and following difficult negotiations, punctuated by many threats by the US to pull out of the agreement or to exclude Canada from a new agreement, USMCA was agreed upon on September 30, 2018. The three member countries still have to ratify the new agreement. When it comes to government procurement, the US would like to limit Canada's access to its markets (under a variation of Buy America policies) while demanding disproportionately higher access to Canadian public procurement. This is apparent in the ongoing conflict over American tariffs over steel and aluminium or the soft lumber issue and will continue to hurt municipalities where those industries operate. This will continue to hurt municipalities that have industries targeted by American tariffs.

It is also extremely disappointing to see data protections extended for biologics, which will drive drug costs up dramatically, and it makes a national Pharmacare plan more important than ever. The Liberal government has talked a big game about Pharmacare and making life-saving medication more affordable for Canadians. But behind the scenes it has been complicit in allowing the cost of prescription drugs to skyrocket—and extending patent protections doesn't help.

CUPE applauds the elimination of Chapter 11, the ISDS (investor-state dispute settlement) mechanism from NAFTA, which CUPE has long fought to have removed, though it is regrettable that Mexico will remain subject to ISDS provisions. Under Chapter 11, Canada became the most-sued government in the developed world. Governments in Canada were sued almost 40 times for exercising and upholding their own democratic decision-making, dishing out close to $250 million in public money to private corporations.

Canadian municipalities and other subnational entities such as provinces, school boards and districts, health regions and provincial hydro monopolies should be concerned about the impact on service contracts and purchasing. The thresholds that Canada has agreed to with the EU in CETA, for instance, are so low as to severely restrict the ability of local authorities to enact "buy local" policies that aim to promote regional economic development or maintain environmental sustainability.

Economists agree NAFTA has cost Canada over 300,000 manufacturing jobs that sustained families and ensured a healthy municipal tax base.

Impacts on public services and local governments

The Liberal government is continuing the Harper government's policy of signing as many free trade agreements as possible. The government is paying lip service to the groundswell of opposition to trade deals that favour corporate interests, promising to make them "progressive" by including enforceable chapters on labour rights, the environment, women's rights and Indigenous rights. But this slogan does not match reality. CETA and the TPP have weak labour and environment chapters, and no gender or Indigenous rights chapters. The Canada-Chile agreement has a gender chapter, but its vague and broad provisions demonstrate the difficulties of using trade agreements to change social policy.

Most Canadians do not want ineffective or potentially harmful trade deals. What people want are better services and more access to them. For instance, health care is a top-of-mind concern for most Canadians and every level of government. Yet the patent extensions that Canada has agreed to in CETA and NAFTA will inevitably lead to rising drug prices for everyone. Some experts estimate that the increased cost of pharmaceuticals in Canada will be as much as $2 billion per year. Higher drug costs create increased pressure on provincial budgets, which in turn will impact municipal transfers and programs.

Municipalities in Canada have long been concerned by trade agreements that give corporations sweeping new powers and rights. More than 70 municipalities passed resolutions against CETA. That was part of the widespread trans-continental mobilization that has kept CETA from being fully applied.

Public outcry derailed the TPP in the US, and NAFTA's renegotiation was driven by similar feelings among disenchanted Americans. Municipalities have an opportunity to protect democratic decision-making, using their influence to demand that Canada does not open government procurement to American investors as part of any renegotiations.

For more information on USMCA and updates on CETA and the TPP, see **cupe.ca/trade**.

May 2019