

November 21, 2012

Dear Premier:

I am writing today on the eve of the Council of the Federation's well timed meeting to discuss the global economy and trade.

This meeting comes at a critical time for Canada's economy and provides you with an opportunity to work together with other provinces to strengthen our economy and to discuss solutions to some of the most pressing issues of our time.

Canada is about to enter a series of trade deals that will severely impact provinces' abilities to set economic priorities in their own jurisdictions. Trade and investor protection deals such as the Comprehensive Economic and Trade Agreement (CETA) with the European Union and the Canada-China Investor Protection Agreement will lead to an extraordinary surrender of our sovereignty, while allowing state controlled companies to manage the development and extraction of our resources. Any change in the regulatory regime a provincial government wants to invoke for public policy reasons could then lead to China suing Canada for lost profits. Both Ontario and Quebec are already facing challenges under existing trade rules.

On November 19, the CBC reported that the World Trade Organization has upheld a complaint by Japan and the EU against Ontario's Green Energy Act. The hearing ruled that the Green Energy Act discriminates against foreign component manufacturers by declaring a minimum percentage of renewable energy goods and services be provided by Ontario-based companies.

It is concerning that in the middle of intense CETA negotiations due to be concluded in the next few months, the European Union has joined with Japan, to challenge the right of provinces to prioritize 'buy local' policies. Acting on behalf of their manufacturing companies, the EU and Japan are using the unelected WTO to undermine the development of sustainable manufacturing in Canada.

At stake is the ability of democratically elected governments to prioritize local purchasing. In this case, local and provincial utilities are being challenged on their ability to include "buy local" conditions when building new green energy infrastructure. Buy local conditions are used by governments the world over, including in the United States, China, Korea and the EU. Ontario has historically used buy local policies for transit infrastructure in order to support the economic foundations for Ontario jobs.

These policies are important for Ontario and the rest of Canada. The Green Energy Act has created 20,000 jobs and nearly 30 new solar companies. As Canada faces the challenge of building a green energy economy, legislation like the Green Energy Act will have a substantial role in encouraging investment in technology, but also the creation of much needed manufacturing jobs.

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PAUL MOIST – National President / Président national **CHARLES FLEURY** – National Secretary-Treasurer / Secrétaire-trésorier national

TOM GRAHAM – **FRED HAHN** – **DANIEL LÉGÈRE** – **LUCIE LEVASSEUR** – **BARRY O'NEILL** – General Vice-Presidents / Vice-présidents généraux



Provincial and local governments need have room to grow Canadian jobs in new areas of manufacturing in renewable and emerging technologies. CUPE urges all provinces to support Ontario in pressing the federal government to appeal this ruling from the WTO.

CUPE is also extremely concerned about the trade negotiations between the Canadian government and the European Union. For the record, CUPE believes that the federal government should publicly disclose the negotiating text and Canada's offers (federal, provincial, territorial) before CETA is signed.

Local procurement is an economic lever that can assist with job creation and environmental protection. Local governments should be able to regulate in these areas without concerns about trade restrictions and penalties.

CUPE members work in a variety of sectors across this country providing public services to Canadians. As such, CUPE also has a long-standing interest in protecting public services in Canada. We are concerned that CETA – and other trade agreements like it – threatens the integrity of our public services by opening them up to EU-based corporations.

Almost 50 cities across Canada that have passed resolutions at the municipal government level asking to be exempted from CETA. CUPE also wants the federal government to seek a clear and broad exclusion for public services which would include language protecting rights to expand public services or return privatized sectors to the public sector without being afraid that we will be hauled in front of an unelected, unaccountable tribunal. These tribunals are one of the reasons we are also opposed to investor-state provisions being included within CETA.

CUPE members, like all Canadians, are also extremely concerned about the impact of CETA on our public health care. We know that the demands for increased patent term protection from the EU will decrease the availability of generic drugs and increase drug costs. A broad exemption for health care is in order in CETA and must include the explicit protection of our right to legislate patent terms so that we can best manage pharmacare costs.

CETA is not the end point for trade agreements for this federal government. How provinces position themselves in relation to CETA sets the pattern for future trade agreements – some of which are now under consideration but many of which have not even been imagined yet.

The sweeping prohibitions of CETA on any measures that could be interpreted as restricting or impairing trade, and its dispute resolution mechanism that explicitly provides corporations and investors with broad powers to sue governments for compensation, seriously impacts upon your ability to regulate in the best interests of your province.

Our previous experience with NAFTA suggests provincial governments that do regulate corporate behaviour can be successfully sued in trade tribunals. In addition to all the challenges that Canada has faced under investor-state provisions (Chapter 11) of NAFTA in Newfoundland, for instance, the most recent NAFTA challenge against the Quebec government's moratorium on fracking for shale gas should raise serious concerns. The suit was brought by Lone Pine claiming that future profits were undermined by the Quebec government's environmental policy to re-examine the impacts of fracking technology and practices on drinking water. This action under NAFTA investor-state provisions has the capacity to

undermine environmental regulations in Canada and exposes the dangers of including investor-state provisions in trade agreements. As it now stands, provinces are not liable for costs that might be assessed but if investor-state provisions are negotiated into CETA, provinces should be very concerned about being held liable for any future costs that might be assessed against them in favour of an EU corporation. Would provinces be responsible to pay for settlements such as the Harper government settlement of the Abitibi-Bowater dispute? This ought to concern all provincial governments.

On the Lone Pine challenge to Quebec, all provinces should be onside. Opposition to fracking is growing across the country especially in New Brunswick, British Columbia, Nova Scotia, Saskatchewan, Alberta, and First Nation communities. At issue is the use of huge amounts of water in the shale fracturing process, the contamination of water through unexpected release of natural gas and other contaminants resulting from fracking, and small earth quakes that can result from fracking which can lead to further complications of water contamination.

We are in real danger of trading away our precious public services and natural resources with no guarantee of successfully competing in the EU's own procurement market. Historically, we have had a negative balance of trade with the EU, and under CETA this balance will continue to grow because we will continue to export more of our raw resources to them while they broaden the range of high-value products they send us.

CUPE also has strong concerns about the Investment Canada Act and the rules around foreign takeover of Canadian company. Having effective foreign investment rules is of importance to all of CUPE's members as it should be for all Canadians, including our provinces.

Even though many foreign takeovers have led to steep job, pay and benefits cuts, bitter strikes, and even closing of operations and removal of machinery – only one foreign take over has been denied under the net benefit test. Clearly, there are many problems with this legislation.

There have been many calls for a review of net benefit test laid out in Investment Canada Act. In fact a review began in 2010, but was halted after the 2011 election.

CUPE calls on the premiers of Canada to support an open public process to review the Investment Canada Act instead of a private federal review. An issue as important as foreign investment needs nationwide, transparent discussion built into the new framework.

Canada is a trading nation, but we cannot continue to give away our natural resources and equip foreign multi-nationals and governments with the right to sue our governments or restrain their ability to govern in the interests of Canadians.

Instead of deals that sacrifice the rights of Canadians to foreign investors, we need fair trade deals that support strategic value-added industries, and support higher wage jobs with improved labour and social standards in Canada and around the world.

Canada is a country of enormous potential and wealth in our land, communities and people. There's no reason why we can't all share in growing prosperity. These measures will not only strengthen the recovery in the short term, but also improve economic growth that everyone can share in over the longer term.

On behalf of the 620,000 Canadian Union of Public Employees (CUPE) members who work hard to deliver public services to Canadians from coast to coast to coast, I wish you a productive meeting of the Council of the Federation in Halifax.

Yours truly

A handwritten signature in black ink, reading "Paul Moist". The signature is written in a cursive, flowing style with a large initial "P" and a stylized "M".

PAUL MOIST
National President
Canadian Union of Public Employees