



## CETA AND GOVERNMENT PROCUREMENT

*This Community Dispatch is devoted to the Canada-European Comprehensive Economic and Trade Agreement (CETA) presently under negotiation. Although international trade agreements are outside of the usual purview of Community Development Halton's research, one of our partners, Advancement of Women Halton, has a series of concerns with this trade agreement, shrouded in silence and with long tentacles into community life. Advancement of Women Halton has communicated with local, regional, and provincial politicians in order to clarify a number of their concerns such as: i) local autonomous decision making on community economic development; ii) the inclusion of crown corporations and quasi-governmental organizations such as school boards, hospitals and emergency power authorities into CETA; and iii) the privatization of public services. CDH has produced this Community Dispatch in an effort to raise public awareness about CETA in order to engage governments and civil society in a full dialogue about its social and economic costs and benefits.*

*- Joey Edwardh*

On May 6, 2009 Prime Minister Stephen Harper, European Union (EU) President Mirek Topolenek and EU Commission President Jose Manuel Barroso announced the start of negotiations toward a comprehensive economic agreement between Canada and the EU. The Canada-EU Comprehensive Economic and Trade Agreement, or CETA for short, is expected to come into effect in 2012. This agreement is intended to deepen and formalize the economic relationship between Canada and the European Union through increased trade liberalization. Little is known about this agreement yet it has been described as the most ambitious and comprehensive trade agreement

since North American Free Trade Agreement (NAFTA).

### Trade Liberalization

On March 5 2009, the "Joint Report on the EU-Canada Scoping Exercise" was released. It establishes the theoretical basis for the agreement and outlines the salient issues to be negotiated. It also highlights the role of each level of government. This report concluded that: "the maximum degree of benefit to both sides would result from a maximum degree of liberalization."<sup>1</sup> Using an estimate based exclusively on quantifiable factors, this document justifies maximum liberalization on tradable goods and services through potential economic gains. It states:

The Study estimates annual real income gains of approximately €11.6 billion for the EU and €8.2 billion for Canada within seven years following the implementation of an agreement... Total EU exports to Canada are estimated to go up by 24.3% or €17 billion, while Canadian bilateral exports to the EU are predicted to go up by 20.6% or €8.6 billion.<sup>2</sup>

This is on top of the \$109.4 billion already exchanged through *bilateral* trade of goods and services. All in all, there seems to be a great deal of money to be made. The questions are for whom and in exchange for what?

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1. The European Commission and the Government of Canada. *Joint Report on the EU-Canada Scoping Exercise*. March 5-2009. (P 8).

2. The European Commission and the Government of Canada. *Joint Report on the EU-Canada Scoping Exercise*. March 5-2009. (P.2).

Chapter three of this report discusses numerous issues that can be negotiated to maximize liberalization and create the aforementioned profits. Each negotiating point augers significant consequences for Canadians; however, this *Community Dispatch* will focus on only one, Government Procurement.

## Government Procurement

The *'Joint Report'* states:

The Scoping Group was of the opinion that any agreement should substantially improve access to public procurement markets aiming at achieving full coverage of central and sub-central government procurement in all sectors, to ensure *inter alia* treatment no less favorable than that accorded to locally-established suppliers.<sup>3</sup>

This trade agreement proposes to “improve access” or open government contracts of all levels of government as completely as possible in a way that does not discriminate against foreign business. This seems reasonable and consistent with a society that adheres to a market economy, so why the concern? In a legal opinion given by Steven Shrybman of the Center of Civic Governance at the Columbia Institute, he discusses how governments of all levels use procurement to advocate and promote the strategic and public interest of their constituents. By stipulating additional conditions for attaining public contracts, governments are able to nurture innovation, stimulate local economic development and employment and promote other policies that are in the public interest, such as, environmental protection, the use of local suppliers or other goals legitimized through the election process.<sup>4</sup>

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3. The European Commission and the Government of Canada. *Joint Report on the EU-Canada Scoping Exercise*. March 5-2009. (P.6).

4. Shrybman, Steven, *Municipal Procurement Implications of the Proposed Comprehensive Economic and Trade Agreement (CETA) Between Canada and the European Union*. The Centre for Civic Governance at The Columbia Institute. May 28, 2010.

What is of concern then is limiting the ability of governments to link their procurement contracts to other areas of public interest. Or, to put it simply, to use contracts in a way that helps governments meet other policy objectives.

Under the draft agreement of CETA, there are several sections that limit the ability of governments to link development goals to procurement contracts. In Chapter 20 of the CETA agreement on Government Procurement, Article 4 articulates Non-Discrimination between EU and Canadian suppliers. This section describes a policy of equal treatment for foreign and domestic suppliers. It suggests that all suppliers must be treated equally when they are competing for government contracts. Fine. That seems fair. It becomes troubling when we consider how CETA limits the kind of conditions governments can impose for awarding these contracts.

Article 4:6 in the same chapter states:

With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.<sup>5</sup>

What’s an offset and why can’t governments impose or enforce them? The definition of an “offset” used in CETA is:

An offset means any condition or undertaking that encourages local development or improves a Party’s balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement.<sup>6</sup>

Based on the policy of non-discrimination prescribed in CETA and the prohibition against

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5. The European Commission and the Government of Canada. *Canada-EU Comprehensive Economic and Trade Agreement Draft consolidated CETA text as at 13.1.10*

6. The European Commission and the Government of Canada. *Canada-EU Comprehensive Economic and Trade Agreement Draft consolidated CETA text as at 13.1.10*

offsets in article 4:6, we can conclude that governments will be unable to use procurement as a local development tool to promote the best interests of its constituents. It will be unable to do so because they will not be able to stipulate conditions that encourage development goals, the use of local businesses or local investment. Furthermore, if these governments state these goals in a clear and transparent fashion, they do not have the right to enforce them. The question becomes why would one limit the ability of a government to ensure that its contracts can satisfy some of its other objectives and how does this benefit Canadian municipalities and its constituents?

CETA possesses a number of other clauses that would greatly increase the administrative costs of the procurement process on local governments. While these clauses are aimed at increasing transparency and lessening corruption, they have a number of adverse effects on local governments. Municipalities would be forced to provide the federal government with information regarding their procurement practices publish detailed notices of intended procurements and, most importantly, provide an accounting of the rationale for their decisions to unsuccessful suppliers for their procurement decisions.

CETA also gives unsuccessful bidders the opportunity to challenge the procurement decisions of local governments. This appeal process could significantly impede the implementation of awarded contracts because they would be halted during a long appeal process. In addition, local governments may have to pay damages to any unsuccessful bidder if they do not comply with the regulations outlined in CETA.

Over 50 municipalities across Canada have expressed concern about CETA and, in fact, some of our neighbours such as Hamilton and Toronto have requested an exemption from CETA altogether. On March 26, 2012, the Town of Oakville, responding to a delegation from the Oakville and District Labour Council, approved a

motion to “endorse the FCM’s (Federation of Canadian Municipalities) seven principles for the Federal Government of Canada to apply to CETA and any future trade deals.” The seven principles can be found on the FCM website<sup>7</sup> and include the following: i) reasonable procurement thresholds; ii) streamlined administration; iii) progressive enforcement; iv) Canadian content for strategic industries or sensitive projects; v) dispute resolution; vi) consultation and communications; and vii) reciprocity. On March 28, 2012 the Region of Halton followed suit, supporting the FCM principles and stating that: “the Region of Halton wants to ensure that it will not be required to tender any regional services under CETA”.

Many municipalities are concerned with CETA. Though it has been suggested that CETA only covers some procurement contracts, it covers the big public expenditures such as the construction of schools, hospitals and other major public works. CETA may be financially beneficial, but any process that greatly limits the ability of governments to link its contracts to its strategic objectives should be a matter of public debate conducted with the utmost transparency. Whatever the result, it should be in the best interest of Canadians.

## Conclusion

CETA is an incredibly complex and broad trade agreement. Rooted in the fundamental principles of liberalism, it is an aggressive trade agreement that formalizes the economic relationship between Canada and the European Union. Though CETA stands to generate a great deal of money by broadening the scope of free trade with Europe, there are a number of issues that should be of concern to Canadians. Furthermore, the unwillingness of governments to discuss this agreement publicly raises serious questions about what is being tabled and what the consequences will be for Canadians.

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7. Federation of Canadian Municipalities, *Backgrounder*. The Federation of Canadian Municipalities.

This paper is small in scope and only deals with Government Procurement on a general level. However, we can conclude that CETA aims to make accessible lucrative procurement contracts without consideration for how these contracts are used to promote local development and advance the public interests. Though we stand to make a great deal of money from this agreement, the question must be asked if we are willing to accept these limitations on our various forms of government by foreign entities not subject to our democratic process.

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