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MANITOBA

CETA:

Constraining Manitoba's Economic Prospects and Policy Options

By John Jacobs and Lynne Fernandez

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Executive Summary

The Canadian government is in the midst of what it hopes is the final stage of negotiations to reach a comprehensive economic and trade agreement (CETA) with the European Union (EU). The negotiations reach well beyond the traditional focus on removal of trade tariffs. Investors on both sides of the Atlantic are calling for an agreement that provides new opportunities in the areas of "infrastructure, civil works, transportation, energy, electricity generation, distribution and transmission, and water." Investor lobby groups are also looking for the agreement to focus on reductions and a reorientation of "non-tariff barriers like standards, procedures and regulations."

CETA set precedents that will have long-term implications. It expands the coverage of international trade and investment agreements to cover provincial and municipal governments and will impact all new services and regulations. The changes associated with CETA will, under most-favoured-nations provisions, be extended to trading partners with which Canada has free trade and investment agreements, such as the US and Mexico.

Manitoba's trade with the EU is imbalanced in terms of the quantity and the value-added quality of goods. Over the past decade Manitoba has had a trade deficit with the EU—on average for each dollar exported to the EU, Manitoba imported $1.80 worth of goods. More than 70 percent of Manitoba exports are in unprocessed or barely processed goods. This contrasts sharply with EU exports to Manitoba, which are virtually all in highly processed and technologically advanced goods.

The imbalanced EU—Manitoba trade record is indicative of the broader Canada—EU trade, with Canada relying on exports of "entry-point products" while the EU exports finished products to Canada. The Manitoba government and manufacturing sector have initiated strategies to expand advanced manufacturing and to increase exports. CETA could derail these efforts. The removal of tariffs and the ability of governments to implement industrial policies could reinforce the export of primary and low value added commodities and undermine the province's advanced manufacturing strategy.

Projections that take into account the removal of tariffs and Canada's experience with free trade agreements indicate the province could lose 300 to 500 jobs. Most of these losses are forecast to occur in the manufacturing sector. When the rise of the Canadian dollar is factored into the impact of tariff removal, the potential net job loss rises to 3,800 jobs.

The EU has identified the removal of provincial restrictions on EU investor access to energy, mining and natural resource extraction in general as the "most important … key target" in the final negotiations. CETA removes the capacity of governments to set local development requirements that, for example, a specific portion of the jobs created must be for local workers, that training must be provided and that a portion of the goods and services for the mine must be provided by local businesses. The removal of such performance requirements from the policy tools available to the provincial government undermines its capacity to ensure Northern Manitoba benefits from the depletion of its non-renewable provincial resources.

While the provincial government has indicated that it is calling for Manitoba Hydro's monopoly on energy generation and distribution be exempted from CETA, it is not clear how much of Manitoba Hydro's operations, such as procurement, would also be exempted from CETA. As negotiations enter the "end-game" and the federal government is being pressured to provide concessions to reach an agreement, the challenge for the provincial government is ensuring strong exemptions to protect Hydro's capacity to support Northern and First Nations are maintained.

Access to the provincial public procurement market has been a key incentive for EU multinationals, a market of between $5.5 and $8 billion annually in Manitoba. These procurements provide considerable economic clout for governments and significant business opportunities. Local preference procurement policies enable governments to ensure that regional workers and businesses benefit from publicly funded purchases, and that these purchases further strategic objectives such as the adaptation of innovative and productivity-enhancing technologies. CETA would curtail this ability by opening procurement tenders to EU investors and by extension to American corporations.

While CETA contains provisions to increase and protect opportunities for the private sector, the same cannot be said for public services; indeed some of the CETA provisions, such as negative listing and the exemption Annexes, appear to be designed to ratchet down the scope and strength of public services. Overall the agreement makes it easier to privatize services and more prohibitive to bring services back into public provision. For new services to address emerging issues such as climate change and new technologies, the default providers would be minimally regulated private corporations.

The increased patent protection for pharmaceutical drugs being demanded by the EU and its brand name pharmaceutical companies could increase Manitoba's annual costs by up to $81.1 million, costing the province's Pharmacare program an additional $38 million annually and private drug plans and consumers an additional $43.1 million a year.

CETA intellectual property rights protection measures could jeopardize agricultural seed saving and replanting. A farmer simply accused of reproducing or seeding a patent-protected variety could be confronted with the seizure of property and the destruction of either the seed or the crop resulting from the seed. Any third party deemed to have assisted in the alleged infringement, like a seed cleaning establishment, could face similar consequences. These potential consequences are likely to cause farmers to diminish seed saving and end up paying for seeds each year at a significant cost increase. These enforcement mechanisms would impact other sectors of economy similarly.

Canada is proposing that CETA incorporate NAFTA's controversial investor-state dispute settlement mechanism which enables foreign corporations to directly sue governments for loss of anticipated profits. The mechanism is only open to foreign investors and disputes are settled by appointed tribunals of international trade lawyers operating outside of and unaccountable to Canada's legal system.

Investor-state arbitration has itself become a growing and very profitable industry for successful claimants and international trade law firms. Active claims in 2009/2010 alone reached into the US $100s of billions of dollars with a record 46 new claims in 2011. Legal costs for these claims average US$ 8 million with costs for some claims reaching more than $30 million. A tribunal recently awarded the largest ever settlement granting a US multinational oil company an award of $US 1.8 billion against the government of Ecuador—interest and legal costs bring the total costs to $US 2.4 billion.

Some countries, such as Australia, have rejected the investor-state mechanism but CETA would expand the jurisdiction of the mechanism to cover the activities of provincial and municipal governments. The $250 million compensation claim by an American oil and gas company in response to Quebec's environmental moratorium on fracking for natural gas underneath the St. Lawrence River is but the most recent example of the potential harmful effect of these claims.

In the end-game negotiations the EU is calling for investors to be compensated for "indirect expropriation"—government regulations to promote "health, safety and environment" that impact corporate profitability. Such proposals, in effect, call for corporations to be compensated for the restriction of operations which are damaging to public health, safety and the environment. These corporate litigation rights would contribute to a chill on new policy initiatives as the prospect of investor-state litigation discourages governments from revitalizing and expanding public services and provides a mechanism for investors to challenge, discourage, and limit new policy initiatives by all levels of government.

CETA is a key step in the entrenchment of the foreign investment-led model of economic development and trade and sets a new benchmark for current and future free trade and investment agreements. It provides foreign investors with expansive new rights that undermine governments, communities and democratic decision-making. The investor-state mechanism penalizes governments that advance public interests by regulating the activities of foreign multinational corporations and it reduces the parameters of what are viable and affordable policy options.

When taken in conjunction with the curtailment of northern and industrial strategies it is clear that CETA would impact fundamental aspects of Manitoba social and economic development and governance. As such, it should, at a minimum, be negotiated transparently and with accountability to citizens and communities.

Introduction

The Canadian government is in the midst of what it hopes is the final stage of negotiations to reach a comprehensive economic and trade agreement (CETA) with the European Union (EU). Negotiations started in 2009 and have now twice passed deadlines without reaching an agreement. Recently leaked documents confirm that the secretive negotiations are at a sensitive stage as negotiators address the most contentious and difficult issues. Having staked much of its international trade strategy on increasing Canada's bilateral free trade agreements, there is particular pressure in these negotiations for the Canadian government.

The difficulty in reaching an agreement is indicative of the broad and precedent-setting scope of the proposed agreement. According to its proponents the agreement is ambitious, going well beyond the traditional focus on removal of trade tariffs and setting the standard for a new generation of trade agreements.

Investors on both sides of the Atlantic are specifically calling for an agreement that provides new opportunities in the areas of "infrastructure, civil works, transportation, energy, electricity generation, distribution and transmission, and water."[1] Investor lobby groups are also looking for the agreement to focus on the reduction and reorientation of "non-tariff barriers like standards, procedures and regulations."[2] For Canadian companies, CETA provides what a national columnist recently characterized as "stealth deregulation and liberalization of the Canadian market with the added benefit of better access to the massive European market."[3]

The agreement is designed to increase and protect international investment opportunities but these opportunities come at a price. Recently leaked documents confirm that Canada is giving up control over public procurement at all levels of government. Indeed, the documents show that in the 'end game' negotiations the EU is demanding further concessions in the areas of local content requirements for purchases related to regional development, energy generation and urban public transport infrastructure. The EU has also set its sights on gaining unhindered access to Canada's natural resources and agri-food industries. The increased investor protections contained in the agreement, such as increasing patent protection and the right of foreign companies to sue the Canadian government, could affect the scope and costs of public services and regulations.

A number of reports have examined the impact of CETA on Canada's economy, public policies and services.[4] This report addresses the potential impact of CETA on Manitoba. It assesses the potential economic impact of removing tariffs on trade by examining the current trajectory of EU-Manitoba trade — a trade relationship that is shown to be highly imbalanced. The report finds that CETA could reinforce this trade trajectory, derail the Province's advanced manufacturing strategy and reduce employment opportunities in manufacturing.

This report also examines the potential impact of providing foreign investors with increased access to public procurement and the impact of weakening the provincial government's ability to promote regional development and to ensure that Manitobans benefit from the province's natural resources. The increased patent protection and investor litigation rights are examined to assess the potential impact on the costs and effectiveness of public institutions and services. Ultimately the paper finds that CETA contributes to a shift in public policy orientation, a shift that diminishes the capacity of the Province of Manitoba to promote economic development and the interests of its citizens and communities.

CETA: Not Just Another Trade Agreement

The proposed CETA follows on a series of free trade agreements (FTA) signed over the past decade with several smaller economies including Peru, Colombia, Jordan, Costa Rica, Panama and Honduras. But CETA is not just another free trade agreement. CETA addresses a call by Canada's corporate sector for an "ambitious agreement" that sets the standard for a new generation of trade agreements. The new generation agreements expand the impact of international trade agreements both in terms of reach and lasting impact. They go beyond the removal of tariffs and are part of a broader reorientation of public policy to support increasing investment and corporate profitability. Beyond the fact that the agreement is with Europe, the world's largest economy,[5] the proposed agreement is precedent setting in a number of ways.

- Previous agreements covered federal government and some provincial government activities. CETA expands the reach of Canada's past and future FTAs to include provincial government ministries, crown corporations and municipal governments, school boards, health institutions etc.
- CETA is the first agreement to expose provincial and municipal governments to a negative listing coverage in which governments must explicitly identify which areas are to be exempted, with all other sectors subject to the terms of the agreement. This approach expands the reach of investment and trade agreements and means that new services and regulations will by default be subject to the agreement.
- The most favoured nation clauses included in other FTAs means that CETA will have an impact beyond the Canada-EU trade agreement. This means that the access to markets and rights granted to investors and corporations will be extended to investors from nations with which Canada currently has free trade agreements. Any more favourable measures contained in CETA will be extended to investors from, for example, the United States and Mexico.[6]
- CETA would set a new benchmark for ongoing and new investment and trade agreements. Each time a new FTA is negotiated, it sets a standard or bottom line

for the negotiation of future agreements that seek to further liberalize investment, trade and regulations. The most recent example is Canada's participation in the Trans Pacific Partnership (TPP). It seeks to attain at least terms of the CETA. This could have an impact for, for example, the treatment of agriculture and supply management in future agreements.

The precedents set by CETA could have long-term implications for Manitoba well beyond its impact on Canada-EU trade.

Manitoba - EU Trade Trajectory

Manitoba-EU trade is relatively small, accounting for 5 percent of total provincial exports and imports. Manitoba exports to the EU are fairly evenly balanced between the manufacturing, agricultural and resource sectors (see Figure 1) and reflect the broader structural changes that have occurred within the Manitoba economy. Manufacturing and agriculture's contribution to the provincial economy is declining, while the mining and petroleum industries' contribution is increasing. Over the past decade agricultural has declined from 5 percent of provincial GDP to 3.3 percent and manufacturing has declined from 13 percent to 11.5 percent.[7] Extractive industries' contribution to the Manitoba's economy has more than doubled from 1.7 percent to 4.7 percent of GDP. As in the rest of the country the service sector continues to exhibit the largest growth.

As Figure 1 indicates these trends are evident in exports to the EU: mining exports have increased significantly over the past three years to surpass the value of Manitoba's agricultural exports. Agricultural exports have declined slightly in value over the past decade while manufacturing exports are once again increasing after a decline coinciding with the recent recession.

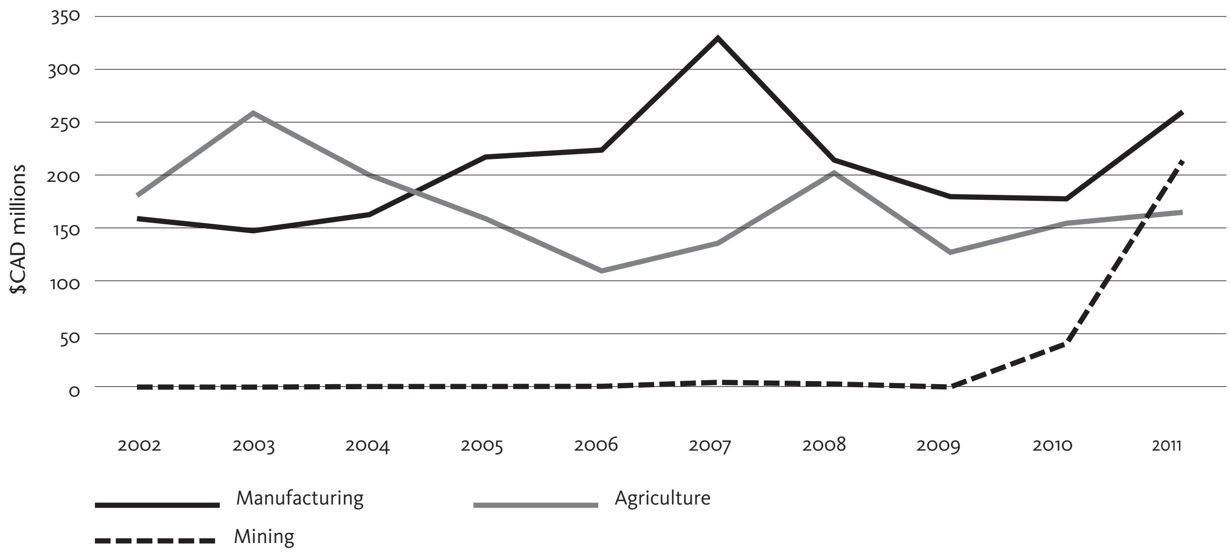
Manitoba's Imbalanced Trade with the EU

Over the past decade Manitoba has averaged $430 million in exports and $780 million in imports from the EU, resulting in an average annual trade deficit of approximately $350 million. In other words, for each dollar of goods exported to the EU, Manitoba imported $1.80 worth of goods. The recent spike in mining exports resulted in a 62 percent increase in Manitoba exports in 2011 to the EU, decreasing the Manitoba-EU trade deficit to $145 million.

Manitoba trade with the EU is also imbalanced in terms of the value-added composition of exports. As Figure 1 indicates, almost 60 percent of exports are produced by the primary commodity industries, agricultural and mining and petroleum. This is confirmed by the products exported. Industry Canada data indicates that more than 70 percent of Manitoba 's top 25 exports are in unprocessed or barely processed goods (Table 1). This is reflected in Manitoba's top five exports to the EU which are, with the notable exception of aircraft components, primary commodities: copper, wheat, aircrafts/parts, seeds and nickel.

This contrasts sharply with EU exports to Manitoba. A review of the top 25 products indi-

FIGURE 1 **Manitoba Exports to EU by Industry (NAICS Classification)**



SOURCE: Industry Canada Trade Data Online

cates that virtually all of EU exports are in highly processed and technologically advanced goods (Table 1) such as harvesting machinery, pumps, valves, pesticides and motor vehicle parts. The imbalanced EU-Manitoba trade record is indicative of the broader Canada-EU trade which is increasingly imbalanced, with Canada relying on exports of "entry-point products" while the EU exports finished products to Canada.[8] OECD research confirms Canada's vulnerability, finding that Canada has a comparative *disadvantage* in high and medium-high technology manufacturing but has a comparative *advantage* in low and medium-low technology manufacturing.[9] The OECD notes that "low-technology manufacturing will decline in importance in industrialized countries" in the face of competition from emerging economies and that Canada must look to innovation to increase the sophistication and productivity of its manufacturing sector.[10]

The current trajectory of trade indicates that the removal of tariffs and increases in EU-Manitoba trade could exacerbate the trade imbalance both in terms of the value-added nature of products traded and in the quantity of goods traded. Indeed the 2008 Canada-EU Joint Study, which the federal government uses to provide the economic justification for CETA, projects that the increase in EU exports to Canada will be twice as large as the increase Canadian exports to the EU.[11] For Canada this would entail increased trade deficits and imports of advanced manufactured goods.[12]

CETA's Potential Impact on Manitoba Manufacturing

The trade data make clear the challenges facing Manitoba in seeking to move up the 'value-added chain.' Over the past decade both the provincial government and manufacturing sector in Manitoba have initiated strategies to expand advanced manufacturing and to increase exports.[13] These strategies are founded on moving up the "innovative spiral" through developing manufacturing clusters that facilitate research and development and the incorporation of productivity-enhancing technological advances in sectors where Manitoba has strategic advantages.

CETA could derail these efforts by reinforcing the existing trajectory of Manitoba-EU trade to-

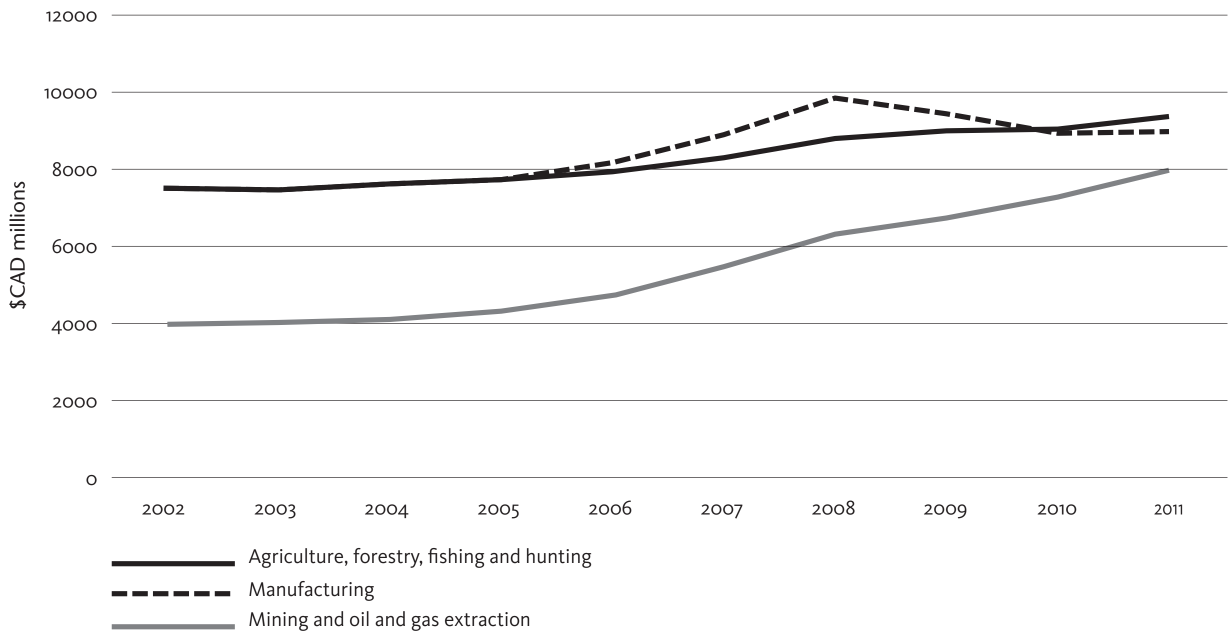
TABLE 1 **Manitoba - EU Trade by Product (2011), $CAD thousands**

Top 25 Manitoba Exports to EU	2011	Top 25 EU Exports to Manitoba	2011
2603 - Copper & Copper ores & concentrates	**214,270**	8433 - Harvesting & Other Agricultural Machinery	47,480
1001 - Wheat	**40,291**	8413 - Pumps for Liquids	29,622
8411 - Turbo-Jets, Propellers & other gas turbines	39,093	8481 - Taps, Valves etc. For Pipes, Tanks etc.	24,001
1205 - Rape or Colza Seeds	**33,463**	3808 – Pesticides	21,767
7502 - Unwrought Nickel	**28,840**	8708 - Motor Vehicle Parts	20,988
3004 - Medications	26,270	8431 - Headings Machinery Parts	20,947
1201 - Soya Beans	**25,522**	8429 - Self-propelled construction & grading machinery	20,274
0713 - Leguminous Vegetables	**21,190**	8471 - Magnetic/Optical Readers	16,127
8537 - Circuit Breaker Boards and Panels	19,383	8412 - Other Engines and Motors	14,859
1209 - Sowing Seeds Fruits and Spores	**17,630**	7308 - Structures of Iron or Steel	14,012
4911 - Other Printed Articles nes	17,622	3908 - Polyamides in Primary Forms	13,059
8412 - Other Engines and Motors	17,523	8701 - Tractors	12,850
1005 - Corn Seed	**10,443**	8704 - Trucks & Goods Transport Vehicles	12,444
1204 - Linseed	**9,073**	8483 - Transmission Parts; Bearings & Gears etc.	12,341
8803 - Helicopter & Airplane Parts etc.	8,516	8466 - Parts & Accessories for Machine-Tools	11,793
2937 - Hormones and Their Derivatives	7,802	8479 - Machines and Mechanical Appliances	10,759
8471 - Magnetic/Optical Readers	7,048	2208 - Liqueurs & Other Spirituous Beverages	10,101
8433 - Harvesting and Other Agricultural Machinery	5,520	8421 - Centrifuges, Filtering Machinery	10,036
8431 - Machinery Parts	5,286	2204 - Grape Wines	9,394
9018 - Medical Instruments and Appliances	4,374	8703 - Motor Vehicles (Other Than Public Transport)	9,378
1207 - Oil Seeds and Oleaginous Fruits	**4,104**	9015 - Surveying Instruments	9,164
7404 - Copper Waste and Scrap	**3,967**	8409 - Parts for Engines	9,116
0304 - Fish Fillets and Other Fish Meat	**3,783**	8803 - Helicopter & Plane Parts etc.	8,970
2915 - Saturated Acyclic Monocarboxylic Acids	3,525	2918 - Carboxylic Acids and Their Derivatives	8,729
5301 - Flax Fibre: Flax Tow and Waste	3,291	9027 - Instruments for Physical/Chemical Analysis	7,819
Sub-Total	577,828	Sub-Total	386,031
Others	73,130	Others	410,047
Total (All Products)	650,957	Total (All Products)	796,078
Primary Commodities (In Bold)	**415,867**		
Percent of top 25	72%		

NOTE: HS 4 codes, Source: Industry Canada, Trade Data Online
SOURCE: Industry Canada, Trade Data Online by Industry and author's calculations

wards the export of primary and low value-added commodities. Trade tariffs between Canada and the EU are already low by historical standards; in this sense they have not been major determining factors in the scale of trade, certainly not when compared to, for example, the appreciation of the Canadian dollar.[14] The removal of tariffs will disproportionately benefit EU exporters to Canada given that at 3.5 percent Canadian tariffs on EU products are higher than average EU tariffs on Canadian goods (2.2 percent).[15] This would exacerbate the disadvantage already faced by Manitoba exporters due to the increased value of the Canadian dollar which has, according to the OECD, "heavily influenced" the sharp drop in Canadian value-added production.[16]

FIGURE 2 **Foreign Investment in Manitoba: Fixed Capital Stock**



SOURCE: Statistics Canada Table 031-0002

A large portion of EU's projected increased exports to Canada will be in the sectors that the provincial government has targeted in its advanced manufacturing strategy. The Joint Canada-EU government study assessing the prospects for CETA, forecasts that EU exports to Canada would increase by 36.6 percent, significantly more than the 24.3 percent forecast increased in Canadian exports to the EU and cites research that anticipates that exports to Canada "would grow primarily in the high tech, high value-added sectors, such as transportation equipment, and machinery and equipment" manufacturing.[17] Canadian exports to the EU are also expected to increase in manufacturing, but given the EU's higher position in the global value chain, as noted above, it is likely that the Canadian exports would be at a lower level of the value chain and technological innovation.[18]

Such a trade trajectory would place Manitoban exporters in direct competition with emerging economies such as China and Brazil, which are also seeking to increase production efficiencies in lower value-added sectors. Canadian manufacturing exporters would be squeezed between EU advanced manufacturing and lower cost production of the BRIC countries (Brazil, Russia, India and China).

Foreign investors have already indicated where they think Canada's exports fit within the global economy. Over the past decade annual investment flows into Canada's oil, gas and mining sectors have roughly doubled whereas flows into agriculture have stagnated, increasing by only 6 percent, and have declined by 7 percent in manufacturing.[19] While comparable provincial data are not available, fixed foreign owned capital assets in Manitoba tell a similar story, with investments in oil, gas and mining doubling (100 percent increase) and a 24 percent increase in agriculture with manufacturing trailing with a 18 percent increase (see Figure 2).[20]

CETA's Employment Impacts

The federal government's case for CETA is based on models used in a 2008 joint Canada-EU eco-

Government's got it wrong on $12 billion GDP boost

$12 billion. That number keeps popping up in debates about the CETA. It's the increase in Canadian GDP the federal government claims will result from the deal.

But where did this factoid come from? Very few reporters or policy-makers know (or bother citing) the original source. It was generated by a computer model built by three European economists, retained by the Canadian and EU governments to work on the 2008 joint economic study of the CETA.

There are now two subsidiary factoids, both derived from the $12-billion claim, that also appear in virtually every DFAIT [Foreign Affairs and International Trade] news release—and trickle down into more stories. Ottawa now claims the $12-billion gain in turn will generate 80,000 new jobs, and boost incomes by $1,000 per family.

Let's learn more about these claims. The European economists used a tool called a "computable general equilibrium" (CGE) model. It consists of hundreds of mathematical equations assumed to describe various relationships in the economy. By fitting particular numbers to those equations, you can simulate the working of an economy (like an enormous game of SimCity). But remember: a CGE model is not *empirically grounded.* Any model can be tailored to look like any economy, but the model's predictive power depends entirely on the validity (or lack thereof) of its assumed equations.

The European model makes assumptions that are typical of its genre, but not remotely realistic. These include: constant full employment (so no one can be unemployed due to imports), balanced trade (so a country's total output cannot be undermined by a trade deficit), no international capital flows (so companies cannot shift investment abroad), and no impact from fluctuating exchange rates. Quaintly, the model assumes Canada consists solely of one "representative" household, fully sharing income from all sources.

Eliminating tariffs produces trade gains when each country specializes in what it does best. But this traditional mechanism only explains $2 billion of CETA benefits. The modellers had to go further, with more farfetched assumptions, to boost their prediction. They assume that invisible, unspecified non-tariff barriers will be fully eliminated by the CETA. They assume Canadian service providers will do as much business in Europe as European firms currently do. Finally, they assume Canadians will save a strong share of new income, all of which is invested in new capital here (thus spurring even more growth). This latter effect alone accounts for *over half* the predicted $12 billion. Given record consumer debt and growing hoards of corporate "dead money," this saving-and-investing assumption is downright bizarre.

The subsidiary claim that CETA will produce 80,000 new jobs is more than unrealistic. Remember, the CGE model assumes constant full employment. That's essential, because it prevents any loss in total output from a lack of competitiveness. The predicted GDP gains do not come from more employment, they come from higher productivity.

The $1,000-per-family factoid is the most outrageous of all. DFAIT simply took the $12-billion gain in GDP and divided it by the number of families in Canada. That assumes that every additional dollar of GDP translates directly into family income. In fact, higher GDP never fully trickles down into income (due to depreciation, retained earnings, indirect taxes and other leakages). And these days, whatever does land in individual pockets is increasingly captured at the top of the income ladder—never reaching the "average family."

From 1980 to 2010, Canada's real GDP more than doubled (dwarfing the tiny impact predicted by the CGE model). Yet real median family income in 2010 was exactly the same as 30 years earlier. How will we get $1,000 per family from CETA, when the median family received nothing from 30 years of growth?

The claim that CETA will boost Canada's GDP by $12 billion is highly questionable. If the underlying CGE assumptions are relaxed, then the impact of CETA could well be negative [as indicated by Stanford, 2010]. The 80,000 jobs and $1,000-per-family claims are worse than dubious. (Excerpt from "Government's got it wrong on $12 billion GDP boost" by Jim Stanford)[22]

TABLE 2 Projected Employment Impacts of CETA on Manitoba

Sector	NACIS Code	Manitoba Employment	Employment Change: A) Tariff Elimination	Employment Change: B) Experience of Other FTAs	Employment Change: C) $C Appreciation + Tariff Elimination
Agriculture	111,112,115	26700	298	1199	298
Mining, Oil & Gas	212 ex 2121	5800	0	394	0
Processed Foods	311	7222	-287	-66	-416
Beverages & Tobacco	312	890	-76	-146	-199
Wood Products	321	3130	-7	36	-72
Paper Products, Publishing	322,323	4571	0	70	-95
Chemical, Rubber, Plastic Products	325,326	3282	-108	-902	-907
Mineral Products nec	327	1277	-14	-50	-50
Metals nec	331 ex above	3417	4	76	-87
Metal Products	332	4599	-48	-170	-239
Motor Vehicles & Parts	3361,3363		0	0	0
Transportation Equipment nec	336 ex above	7522	8	35	-678
Electronic Equipment	334,335	430	-1	-37	-115
Machinery & Equipment nec	333	5895	-82	-935	-1262
TOTAL			**-312**	**-496**	**-3820**

SOURCE: Author's calculations from Stanford 2010 (p. 34), Statistics Canada CANSIM Tables 281-0024 and 282-0008.

nomic study. These models do not account for real world variables. The Joint Study's modeling is based on assumptions of full employment, perfect competition and efficient operation of unregulated markets (see box "Government's got it wrong on $12 billion GDP boost"). Ultimately the report's economic simulation results "amount to an *assertion* that free trade will produce mutual economic gains, not a *demonstration* that this will be the case."[21]

Rather than being based on idealized equilibrium modeling techniques, a useful assessment of the potential impact should start from actual economic and trade data. Table 2 presents the potential impact CETA could have on employment levels in Manitoba based on a methodology utilized in a 2010 study of the national employment impacts of CETA.[23] Three scenarios are presented: the impact of the reduced tariffs are presented in scenario A; scenario B applies the trade impacts of past FTAs to Manitoba-EU trade; and scenario C estimates the combined impact of tariff removal with the rise in the value of the Canadian dollar relative to the Euro.

In the first scenario tariffs on both sides are eliminated and the changes in bilateral trade are estimated using assumed elasticity parameters from the Joint Study. As noted above, Canadian tariffs on imports from the EU are on average higher than EU tariffs on Canadian imports to the EU. Removal of these tariffs would therefore disproportionately benefit EU exporters. This could result in job losses in Manitoba as companies struggle to adjust. Scenario A indicates that the removal of tariffs could create some jobs in the agricultural sector, though these gains would be overshadowed by the loss of roughly 600 jobs in manufacturing and result in net employment loses of approximately 300 jobs.

Scenario B presents the employment impact on Manitoba if the CETA experience follows the trends of past FTAs. While trade has increased following these agreements, Canada's exports have tended to grow more slowly than Canada's imports, a situation that is, as noted above, also forecast to occur with CETA. Table 2 indicates that agriculture, and to a lesser degree mining, would post employment gains while employment in the manufacturing sector— in particular, chemical, rubber and plastics manufacturing (900 jobs lost) and machinery and equipment manufacturing (935 jobs lost)—would be negatively impacted. Under this scenario CETA could result in net losses of about 500 jobs.

Scenario C addresses the inability of the equilibrium modeling used in the Joint Study to take into account macroeconomic and monetary factors, including the effect of exchange rates. In Scenario C, the impact of the 19% rise in the Canadian dollar relative to the Euro is included with the impact of the tariff reduction. This increase occurred between the time of the Joint Study release and the March 2009 announcement of intention to negotiate CETA.[24] The combined impact of tariff removal and the appreciation of the dollar could result in net loss of more than 3,800 jobs with the highest number of jobs lost (1,260) in the machinery and equipment manufacturing.

Overall the scenarios indicate potential modest gains in Manitoba's agricultural sector but these gains are out-weighed by the loss of jobs in the higher value added manufacturing sector. The scenarios indicate that CETA, rather than increase employment opportunities, could undermine the provincial manufacturing strategy, a situation that would be exacerbated by a continued high Canadian dollar.

CETA curtails industrial policy

CETA could also curtail the Province's capacity to use industrial policies to facilitate greater value-added production through economic development and new investment. As discussed in the sections below, CETA explicitly curtails governments' ability to attach conditions on new investment and acquisitions in terms of, for example, requiring research and development or employment creation (see Northern Development section below). CETA would also disallow provinces from using government purchasing power to support local and provincial economic development, for example, by ensuring that a portion of the public funds for public transport and infrastructure renewal is allocated to businesses in Manitoba (see Procurement section below).

Similar industrial policies have been instrumental in enabling economies to move up the value-added chain, as in the rapid industrialization of the East Asian economies but also in the historical rise of world's industrial economies.[25] China is successfully using such strategic interventions to move from being a low-cost producer of labour intensive exports with low value added to moving into higher value added sophisticated products that were once dominated by OECD countries such as heavy construction machinery.[26] Some have observed a re-emergence of industrial policy in the EU and the United States as governments seek to stimulate a recovery from the great recession.[27] CETA removes important industrial policy tools that have proven successful in, and arguably essential to, the transition to the production and export of higher value added high-tech products in today's advanced economies.

Governments may have valid reasons for not currently utilizing more active industrial policies, but CETA would remove these policies as options for future governments, thereby reducing the policy options available to address changed economic circumstances and needs. Permanently removing these policy tools curtails the capacity of governments to meet changed political orientations and demands on the part of citizens in the future and thereby curtails the democratic aspirations of citizens. The removal of the capacity of governments to regulate and set conditions on investment, foreign or domestic, contributes to a fundamental shift in economic and political power from citizens and communities to investors and corporations.

CETA and Northern Development in Manitoba

The EU has identified the removal of provincial restrictions on EU investor access to energy, mining and natural resource extraction in general as the "most important … key target" in the final negotiations.[28] Giving in to EU demands could curtail the capacity of the provincial government to ensure that investments in Northern Manitoba benefit the region and contribute to sustainable development. CETA could impact this capacity in two key policy areas. Leaked drafts of the agreement indicate that it will not allow governments to attach conditions (performance requirements) on investments, for example, in the acquisition of new and existing mining projects. The drafts also indicate that provincial governments and crown corporations will be restricted in the use of their purchasing power to ensure that local and provincial firms are allocated a portion of government goods and services procurement. They will also be prohibited from bargaining with foreign firms bidding on government contracts in order to boost local benefits or promote local development.

According to the provincial government the North with its vast natural resources "is key to Manitoba's future."[29] The provincial Northern Development Strategy seeks to ensure that northerners "are fully involved and fully benefit from increased economic development" in the region.[30] The strategy includes initiatives to increase employment, education and training opportunities through construction of hydroelectric power generation, mining and transportation infrastructure.

The export of natural resources has become an increasingly important component in Manitoba's economy and the province's "mining sector is experiencing a historic level of mineral production growth."[31] Mining is capital intensive and currently produces few employment opportunities in comparison with other industries.[32] But the jobs that are produced in the extractive sectors are skilled and well-paid, and could make a significant contribution to increasing skills and income in Northern communities. Mining can also provide regional business opportunities if goods and services are locally sourced and linkages are developed with the local economy. Economic opportunities are also increased when mining companies add value to primary commodities through local processing and refining.

The recent history of extractives industries' contribution to economic development is chequered at best. While the global mining industry has produced record profits over the past decade it has been less successful in providing benefits for the regions within which it operates.[33] Mining also comes with significant environmental impacts and companies' exploration and exploitation of resources in more remote areas in search of untapped deposits has often brought them into conflict with First Nations.[34]

The challenge for governments and communities is how to exploit a finite resource in a manner that facilitates the transition to long-term development with minimum negative social and environmental impact. International financial institutions are increasingly recognizing that along with the generation of taxation revenue, the best contribution mining investment can make to local economic development is through the direct creation of employment and business opportunities.[35] There is also recognition that these benefits do not follow automatically from foreign investment in mining; rather these objectives must be prioritized and integrated into the granting of licenses and the development and operation of mining projects.[36]

CETA removes the capacity of governments to set local development requirements, such as stipulating that specific portion or number of the jobs created must be for local workers, that training must be provided and that a portion of the goods and services for the mine must be provided by local businesses. Leaked documents indicate that CETA would disallow the federal and provincial governments from requiring EU investors to

- "achieve a given level or percentage of domestic content;
- purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
- transfer technology, a production process or other proprietary knowledge to a person in its territory"[37]

The removal of such performance requirements from the policy tools available to the provincial government undermines its capacity to ensure Northern Manitoba benefits from the depletion of a non-renewable provincial resource.

Early drafts of Canada's proposal for the agreement indicate that the federal government is seeking to include labour mobility provisions that could also undermine local employment and training opportunities. In keeping with the calls by large Canadian and EU corporations that "the agreement must also ensure improved labour mobility [including] the use of permits and streamlined procedures to admit people under temporary entry conditions, in particular for intra corporate transfers' longer-term assignments,"[38] the agreement provides for a very broad interpretation of "temporary entry" employment. Under the "technicians" category the agreement allows temporary entry for, for example, engineers and technicians, mining supervisors, underground miners, plumbers, electricians.[39] The federal government's initial CETA proposal does not provide limits on the duration of the temporary entry, nor limits on the number of people that a company may provide temporary entry to under these provisions.

Such provisions in conjunction with the recently announced skilled trades immigration program could undermine the employment opportunities associated with the new investment in mining as companies would be more able to import low-paid temporary workers, who have few benefits or protection from exploitation, from other jurisdictions, making it all the more important that provinces be able to set employment-related performance requirements for new investment in the extractives industries.[40] Increasing the ease with which foreign investors can hire foreign workers could also remove some of the motivation for companies to train local workers and could undermine the development of a skilled mining workforce in Northern Manitoba.[41]

CETA, Manitoba Hydro and Northern Development.

Expanding Manitoba's northern energy and transportation infrastructure is also a core component of the Province's Northern Development Strategy. The Province forecasts upgrading rail lines and highways and building new all-season roads and regional airports.[42] These projects will contribute millions of dollars in expanded economic activity in the North. The provincial government's policy seeks to ensure that northern workers and businesses are given priority in these projects. CETA could open up purchases of good and services and construction projects to foreign companies and curtail the capacity of the provincial government to ensure local benefits.

CETA could impact Manitoba Hydro's role as a catalyst for northern development. The development of hydro power and transmission is a key component of the province's Northern Development Strategy.[43] Manitoba Hydro continues to play a central role in the strategy as it expands its generating capacity in the north. These projects bring valuable economic activity to northern communities. For example, the construction of the 200 MW Wuskwatim Generating Station resulted in $127 million being spent on goods and services supplied by northern communities.[44] Plans are underway for the construction of the 695 MW Keeyask and 1,485 MW Conawapa dams.

Manitoba Hydro has used its purchases of goods and services in support of Northern operations to increase employment, training and business opportunities for Northern communities and First Nations. The construction of the Wuskwatim dam was, for example, based on a Project Development Agreement (PDA) with Nisichawayasihk Cree Nation that included procurement provisions. Through the Joint Keeyask Development Agreement, four Keeyask Cree Nations will benefit from the construction of the Keeyask Generation Project. PDAs include the Northern Training and Employment Initiative (run by Manitoba Hydro, Human Resources and Skills Development Canada, Aboriginal Affairs and Northern Development Canada, Western Economic Diversification and the Province of Manitoba), which provide training and jobs to First Nations workers. These provisions also provide opportunities for Northern businesses through restricted tendering and Manitoba content policies that prioritize northern business.[45] While there are indications that preferences providing opportunities for First Nation peoples would be protected from CETA coverage, policies which seek to support northern businesses generally could be curtailed under CETA's procurement provisions, as discussed in the procurement section below.

EU negotiators are seeking to open Manitoba Hydro goods and services purchasing to EU companies. Recently leaked documents reveal that EU negotiators continue to demand greater access to energy sectors stating that "a number of Canadian Provinces have been very reluctant to allow foreign access to this sector (energy) … The EU is ready to grant full and unrestricted access to Canada, on condition of reciprocity, but Canada deliberately keeps the energy sector for the end-game." While the provincial government has indicated that it is calling for Manitoba Hydro's monopoly on energy generation and distribution to be exempted from CETA, it is not clear how much of Manitoba Hydro's operations, such as procurement, would be exempted from CETA. As negotiations enter the "end-game"[46] and the federal government is pressured to provide concessions to reach an agreement, the challenge for the provincial government is ensuring that strong exemptions to protect Hydro's capacity to promote Northern and First Nations are maintained.

Procurement

Access to Canada's lucrative public procurement market has been a key incentive for EU multinational corporations. The World Trade Organization (WTO) estimates that procurement by all levels of government entails between 10-15% of GDP in industrialized nations, indicating that purchases by the federal, provincial and municipal governments in Manitoba contribute between $5.5 billion to $8 billion to the province's economic activity annually.[47] These procurements provide considerable economic clout for governments and significant business opportunities.

Various levels of government both in Canada and internationally use procurement to support economic development strategies. Such strategic procurement has been used by the Manitoba government to provide economic opportunities for northern and First Nations communities. The federal government has recently used limited tendering to ensure that domestic shipbuilding companies in Vancouver and Halifax benefit from the construction of new vessels for the Canadian navy, creating more than 10,000 direct and indirect jobs and modernizing Canada's shipbuilding capacity.[48] The Government of Ontario's Green Energy Act seeks to support the provincial transition to regional generation of cleaner energy and the creation of thousands of jobs by providing local and provincial energy producers with preferred rates and access to the provincial power grid.[49]

Internationally governments have a long tradition of using procurement to support domestic economic development. A number of dynamic economies have recently attached buy-domestic conditions to economic stimulus programs.[50] In 2011 Brazil responded to a sharp appreciation of its currency by implementing a procurement policy which stipulated that government agencies would pay a premium of up to 25 percent for Brazilian produced manufactured goods containing 40 percent or more domestic content or content from its regional Mercosur trading partners.[51] China's National Indigenous Innovation Product Accreditation program only allows government agencies and departments to purchase high tech products such as computers and software, communications products, new energy devices, and high-efficiency and energy-saving products from domestic suppliers.[52] Stimulus measures to revive the US economy from the great recession stipulated that between 50-100 percent of the content of goods purchased through the American Recovery and Reinforcement Act must be domestically manufactured.[53]

Local preference procurement policies enable governments to ensure regional workers and businesses benefit from publicly funded purchases and that these purchases further strategic objectives such as facilitating the development and regional adaptation of innovative and productivity enhancing technologies.

CETA could dramatically diminish the capacity of governments in Canada to use domestic procurement measures. While NAFTA already limits the federal government and World Trade Organization (WTO) agreements cover some provincial departments, CETA would extend the prohibition on using procurement for regional development to all provincial government activities, to crown corporations and to municipal governments. This includes public entities such as school boards and publicly-funded academic, health and social service institutions. Municipal governments would be restricted in their use of locally generated tax dollars to directly support the local economy.

According to leaked drafts of the agreement, CETA specifically prohibits procurement policies that are based on "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."[54] According to the draft, "with regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset [local development requirements]." Under such restrictions, according to Sinclair,

> even voluntary or unsolicited undertakings by potential suppliers to provide local benefits cannot be considered in purchasing decisions. Furthermore, such rules prohibit governments from negotiating or considering "any condition or undertaking that encourages local development," even if the procurement contract is open on a completely non-discriminatory basis to foreign bidders.[55]

CETA rules, in effect, discourage many socially responsible practices on the part of corporations as governments are prohibited from selecting a contractor based on a company's record of contributing to local development. Under CETA's procurement chapter, according to the Trade Justice Network's assessment of leaked texts, "social and environmental criteria may be adopted *only if there is no local or Canadian bias whatsoever in these government purchasing decisions*." (emphasis in original).[56]

Municipal governments across Canada have sought clarification and exemptions from CETA coverage. But leaked early drafts of CETA indicate that all municipal purchases of services over $300,000 and construction contracts of over $8 million will be open to EU companies. CETA also contains a number of administrative provisions that are explicitly designed to facilitate open access by EU companies to the tendering process, by, for example, providing rules for contract tendering, centralized electronic posting and processing of tenders to ensure that foreign suppliers and investors have equal access to procurement at all levels of government in Canada.[57]

These thresholds would exempt the majority of purchases by smaller municipalities and a significant number of purchases in larger municipalities such as Winnipeg and Brandon. But experience from the government procurement sector indicates that 80 percent of the total value of government procurement is accounted for by 20 percent of the tenders that are for projects with high ticket prices.[58] From this perspective, the tenders that absorb the most public funds, and therefore have the most capacity to impact the local and provincial economy, are allocated to a minority of the total contracts, but the value of these contracts is high and more likely to come in above the proposed CETA thresholds.

Multiple year contracts for more technical services, for example engineering consulting, would add up to hundreds of thousands of dollars. Infrastructure construction, such as transportation, sewage and water treatment facilities, are high-cost items that could surpass the $8 million threshold. In 2011, the City of Winnipeg signed an estimated $751 million deal with Veolia to upgrade two sewage treatment plants and build a new bio-solid plant[59]. Multiyear contracts for products and services to public institutions such as universities, hospitals and school boards could also entail contracts that would surpass the thresholds. This would indicate that even for mid-sized municipalities, larger purchases could be covered by CETA.

Recently leaked documents confirm that while Canada has already provided significant access to Canadian sub-national procurement markets, EU negotiators continue to push hard for the removal of local content in purchasing in high-ticket items such as public urban transport, and energy generation and provincial regional development initiatives.[60]

CETA could undermine recent initiatives by municipalities and citizens to promote more proactive use of government procurement to achieve greater local benefits. A recent collaboration by Canadian municipalities targets more than $10 billion in local government procurement for sustainable purchasing. According to a recent report commissioned by the municipalities, policies should place a "procurement priority not only on price, quality and service, but also on the environmental and socio-economic impacts of a product or service," including "purchasing to promote health and safety, local economic development, minority suppliers, social enterprises or Fair Trade products."[61]

Polling indicates that 70% of Manitobans think that it is "very important" to buy food produced in the province.[62] Citizen initiatives have called on the province to use its purchasing power of $8 million annually to support locally grown and processed foods through preferred procurement of Manitoba foods by large public institutions.[63] Annual and multiyear food service contracts by these institutions could exceed the proposed CETA thresholds, thereby constraining the provincial government's capacity to use its purchasing power to give preference to Manitoba food producers.

Governments have a responsibility to promote the interests and build the economic capacities of the communities to whom they are accountable. CETA proposals on procurement would curtail this ability by opening procurement tenders to EU suppliers, investors and eventually to American and other foreign corporations through the most-favoured-nations clauses in WTO agreements.

Public Services

Public institutions and services, such as Pharmacare and Manitoba Public Insurance, have historically played a key role in addressing some of the challenges the Province and its citizens have faced. CETA could increase the costs of and constrain the ability of the provincial government to revitalize existing and develop new public services to address emerging policy issues and to support the well-being of all Manitobans. Investors look to CETA to increase and protect investment opportunities. This includes opening sectors of the economy that currently operate as complete or partial public sector monopolies to private investment. Investors are specifically looking to CETA to provide opportunities in the areas of "infrastructure, civil works, transportation, energy, electricity generation, distribution and transmission, and water."[64]

While CETA contains provisions to increase and protect opportunities for private investors, the same cannot be said for public services. Indeed some CETA provisions, such as negative listing and the exemptions Annexes, appear to be designed to ratchet down the scope and strength of these services.

CETA is based on a "negative listings" approach to identifying the services to be covered by the agreement. NAFTA also used this approach but it included a general exemption for all provincial and local government measures which did not conform to the agreement. In CETA's negative listing all provincial and municipal sectors and activities are slated to be opened up to CETA and foreign investors except those explicitly identified as protected in the agreement's Annexes, as discussed below. In other words every aspect of the economy is subjected to the provisions of CETA except those explicitly agreed to by both parties. Business lobby groups advocate for the negative list approach because it "lessens uncertainty for corporations and eliminates the need to re-negotiate the trade agreement to deal with future developments. 'More than 50 per cent of services that we and our children are going to consume in 50 years have not yet been invented'."[65]

This, it is argued, would save governments having to renegotiate the agreement when new policy issues emerge but it also means that the private sector becomes the default provider of new services. It means that government initiatives to expand existing, and establish new, services will be subject to claims by private investors for compensation for lost potential profits and be subject to investor-state dispute settlement claims, as discussed below.

The long term viability of public services is further undermined by the manner in which the protection of services are dealt with in CETA. Exemptions from the investment and services provisions of CETA are contained in two Annexes providing different levels of protection from privatization. Annex One identifies those services that a government seeks to protect, but which, once they are privatized by the government of the day, lose their protection; that is, Annex One exemptions can operate as, to use the EU negotiator's word, a 'ratchet' towards privatization. Annex Two specifies sectors that are permanently exempted from CETA; that is even if a service, such as healthcare, is privatized it can be brought back into public provision.

The federal government has, for example, reserved its right to review foreign acquisition of Canadian corporations, to ensure a "net benefit" as an Annex One, which means that it is willing to allow this capacity to be phased out over time.[66] The Manitoba government has called for strong protection of services, such as energy and insurance via both Annex One and Two reservations but these are asking positions in the negotiations. Recently leaked documents confirm that in the 'end game' negotiations Canada is facing more pressure for increased investor access to, for example, energy generation. It is also worth noting that Annex Two reservations, while providing governments with the option of at some future date bringing a privatized service back under public administration, do not protect them from being sued. Investors could still demand compensation for reduced investment returns should a future government seek to, for example, lower the rates a private provider charges, set higher standards for privatized service, or terminate a contract and return a service to public provision. This is because even Annex Two reservations would not protect governments against investor claims under the expropriation/compensation and minimum standards of treatment obligations of the CETA.

Increasing Pharmaceutical Drug Costs

The EU is home to many of the world top brand name pharmaceutical companies and EU negotiators are pushing hard for increased intellectual property (IP) rights protection for pharmaceutical drugs. If the EU proposals are accepted Canada would have "the highest legislative or structural protection for new pharmaceuticals in the world."[67]

EU negotiators extend the monopoly patent protection for brand name drugs by:

- "Adding the time it takes for a drug to receive regulatory approval (up to five years) on to the regular 20-year term of monopoly patent protection;
- Longer terms of data exclusivity, up from eight to 10 years, including protection for non-innovative drugs; and
- New rights of appeal that would enable the brand name drug industry to delay the approval of generic drugs."[68]

These proposed changes would increase the costs of drugs to consumers and provincial governments. They would increase the monopoly patent protection for brand name drugs and delay the availability of cheaper generic drugs.

A study by two experts indicates that the patent changes could increase Canadian drug costs by up to $2.8 billion annually and Manitoba's annual costs by up to $81.1 million, resulting in increases to the Province's Pharmacare costs of $38 million annually to private drug plan and consumer costs of $43.1 million a year.[69] The federal government's own research indicates that increasing patent protection would increase Canadian's drug costs by almost $2 billion a year.[70] The increased costs would more than absorb the anticipated $100 million savings from the agreement for bulk purchasing of generic drugs recently announced by provincial governments.[71] Canada's premiers have called for the federal government to cover

Agricultural seeds and the enforcement of intellectual property rights

Drafts of CETA's intellectual property rights chapter indicate that the enforcement of patents could have far reaching consequences for agriculture. Both the plant variety protection rights and the plant breeders rights and patents would be covered under the provisional and precautionary measures and would affect a farmer's ability to save and reuse seeds. Even in cases of alleged infringement of an intellectual property right, the chapter states that

"1. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional and precautionary measures, including interlocutory injunction, against a party, or where appropriate, against a third party….

2. Each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody the goods suspected of infringing an intellectual property right so as to prevent their entry into or the movement within channels of commerce.

3. the judicial authorities may order, in accordance with domestic law, the precautionary seizure of property of the alleged infringer, including the blocking of its bank accounts and other assets…."

The leaked draft goes on to say that the judicial authorities may order the destruction of the materials and implements predominately used in the creation or manufacture of those goods.

Seed savings and replanting is crucial to agriculture. Under these measures a farmer simply accused of reproducing or seeding a protected variety or a variety containing a gene patent could be confronted with the loss and seizure of his/her property and the destruction of either their seed or the crop resulting from the seed. In addition the implements used to produce that crop could be destroyed and injunctions issued to prevent a farmers from selling their crop. Any third party such as a seed cleaning establishment or others deemed to have assisted in the alleged infringement could face similar consequences. Ultimately the disruption caused by these kinds of litigation and actions are likely to cause farmers to curtail seed saving and reuse and end up paying for seeds each year at a significant cost increase. This would result in lower profits for farmers and possibly trigger significant payouts from government support programs further costing the governments of Manitoba and Canada. These intellectual property enforcement procedures could have similar impacts on other sectors of the economy.

Terry Boehm, President, National Farmers Union

any additional costs associated with the drug patent changes.[72] But even if the federal government were to agree, this simply means that taxpayers would be paying for this boost to the profits of Europe's pharmaceutical industry at the federal rather than the provincial level.

According to brand name pharmaceutical companies these measures are necessary to ensure investment and research and development in Canada. Yet over the past decade, the industry did not keep its previous commitment to invest 10 percent of its sales back into research and development in Canada in return for patent protection.[73] The tenuous link between providing increased patent protection and increased investment was recently confirmed by a former executive of the pharmaceutical industry lobby when he claimed that there is no assurance that providing increased patent protection would lead to increased investment in Canada, but the former lobbyist concluded "it [increased protection] shouldn't hurt," adding that the higher drug costs is the price Canada needs to pay for the other "benefits" included in the trade deal.[74]

Investor-state Mechanism and the Reduction of Policy Options

Canada is proposing that CETA incorporate NAFTA's controversial investor-state dispute settlement mechanism which enables foreign corporations to directly sue governments for loss of anticipated profits associated with government policies and regulations. The mechanism is only open to foreign investors and disputes are settled by appointed tribunals of international trade lawyers operating outside of and unaccountable to Canada's legal system. Under NAFTA Canada has already faced 30 claims. Some of these claims are ongoing but the five suits which Canada had lost by 2010 have cost the country more then $157 million damages alone and millions more in legal costs.[75] These suits cover a wide range of activities from governments requiring local development benefits on investment to legislation promoting environmental sustainability. A tribunal recently ruled in favour of oil and gas companies in their claim that Newfoundland and Labrador had no right to require companies to invest in local research and development as a condition for extraction and export of provincial resources.[76] An American energy company has recently served notice of intent to initiate a $775 million suit against Canada claiming that it was discriminated against by Ontario's Green Energy Plan's domestic content requirements.[77]

European multinationals have successfully pursued claims worldwide costing governments hundreds of millions of dollars.[78] Investor-state arbitration has itself become a growing and very profitable industry benefiting both international trade law firms and the companies that are successful in their claims. For governments the punitive threats and costs continue to climb. International investor claims active in 2009/2010 reached into the US$ 100s of billions of dollars.[79] The number of claims continues to increase, reaching a record 46 new claims in 2011.[80] According to the OECD, legal costs for these claims average US$8 million with costs for some claims reaching more than $30 million.[81] A tribunal recently awarded the largest ever investor-state settlement granting a US multinational oil company an award of US$ 1.8 billion against the government of Ecuador—interest and legal costs bring the total costs to $US 2.4 billion.[82]

For some countries the potential liabilities and the loss of policy sovereignty is too high a price to pay. In 2011 the Australian government served notice that it would no longer include the investor-state dispute settlement mechanism in its international trade agreements, stating that it "does not … support provisions that would constrain the ability of Australian governments to make laws on social, environmental and economic matters in circumstances where those laws do not discriminate between domestic and foreign businesses" and it does not support provisions that constrain a government's capacity to promote public health.[83]

CETA would expand the jurisdiction of NAFTA-like investor-state dispute settlements process in Canada to cover EU investors and the activities of provincial and municipal governments.[84] In NAFTA the federal government was liable for all investor-state claims. But according to the prime minister "… in future, should provincial action cause significant legal obligations for the government of Canada, the Government of Canada will create a mechanism so that it can reclaim monies lost through international trade processes."[85]

The process is heavily biased in favour of promoting and protecting foreign investment and has led to a very broad definition of expropriation to being anything that adversely affects future profitability. This could open the door to "arbitration claims that measures to expand public services or to restrict private for-profit provision amount to expropriation and that compensation must be paid to foreign investors that are negatively affected."[86] The $250 million compensation claim by an American oil and gas company in response to Quebec's environmental moratorium on fracking for natural gas underneath the St. Lawrence River is but the most recent example of the pernicious effect of these claims.

Indeed, recently leaked documents indicate that the EU is demanding what is in effect an expansion of investor-state coverage. It is now calling for investors to be compensated for what the leaked documents call "indirect expropriation," — government regulations to promote "health, safety and environment" that impact corporate profitability.[87]

Such proposals call for corporations to be compensated for the restriction of operations that are damaging to public health, safety and the environment. A very broad range of policies could be interpreted as indirectly impacting corporate activities of one sort or another. In effect only those policies that maintain or increase investors' returns would be immune from potential claims. The settlement of disputes relating to the appropriate compensation could also be subject to investor-state litigation. Such compensation signals that despite the EU's domestic commitment to the precautionary principle, the principle is not being applied to foreign investment by EU corporations; indeed compensating corporations for harmful activities, rewards a lack of precaution.[88]

The investor-state process operates as an enforcement mechanism for international investment, and indeed investor, led policies and discourages government policies that might compromise corporate profitability. These corporate rights would directly contribute to a chill on new policy initiatives and a closing of policy space as governments would be reluctant to take measures which might infringe, even indirectly, on the activities of a province's or municipality's most powerful economic players, especially given these companies' expanded ability to litigate. Ultimately these provisions constrain the development of robust public regulations and the institutions to implement and enforce them. The prospect of investor-state litigation discourages governments from revitalizing and expanding public services. Indeed, the threat to sue alone has in the past discouraged provincial governments from initiating progressive public policies.[89]

The implementation of such CETA rules serves to discourage the development of new progressive policy initiatives to address existing and emerging issues such as global warming, the introduction of new technologies and a volatile global economy. As noted in a recent report on the provincial impact of CETA:

The threat of investor-state litigation provides a mechanism for investors to challenge, discourage, and limit new policy initiatives by all levels of government. In effect, CETA empowers international investors to play a key role in retrenching public services and constraining what governments can do to promote the public interest. This feature of CETA would curtail the role and capacity of governments, undermine democracy, and would profoundly diminish policy sovereignty.[90]

Conclusion

The issues under negotiation in CETA are crucially linked to Manitoba's capacity to promote economic development and citizens' well-being. EU exports to Manitoba are disproportionately concentrated in high value-added manufactured goods. The removal of tariffs could entrench this trade trajectory and undermine the Province's advanced manufacturing strategy. CETA's restrictions on the Province's capacity to set performance requirements on the foreign investors would also curtail provincial efforts to benefit from resource extraction and to stimulate northern development. These measures undermine the government's ability to implement industrial policies and strategic trade initiatives that are at the core of locally and provincially driven international trade strategies. (Manitoba Aboriginal and Northern Affairs | Province of Manitoba n.d. Manitoba Aboriginal and Northern Affairs | Province of Manitoba n.d.)

The restriction of governments' ability to ensure local benefits from public procurement signals a further containment of policy space and democratic decision-making at the municipal and provincial level. The sustainability of Manitoba's public services is compromised by the agreement's focus on opening up new areas of the economy to private investors and the default preference for private for-profit provision of new services. The EU is also calling for provisions that would privilege the interests of foreign investors over the health, safety of communities and the environment and would make it more costly and prohibitive for citizens to hold corporations to account.

CETA is a key step in the entrenchment of the foreign investment led model of economic development and trade, and sets a new benchmark for current and future free trade and investment agreements. It provides foreign investors with expansive new rights that undermine governments, communities and democratic decision-making. The investor-state mechanism enforces these rights. It penalizes governments that advance public interests by regulating the activities of transnational corporations and it reduces the parameters of viable and affordable policy options.

CETA is the new bottom line for initiatives to realign public policy to meet the preferences of international investors and transnational corporations. The agreement could have long-term implications for Manitoba's international trade and the capacity of governments to promote the well-being of citizens and communities. As such, it should, at a minimum, be negotiated transparently and with accountability to citizens and communities.

Endnotes

1 Beatty and Thumman, 'Build a Bridge Across the Atlantic'.

2 Ibid.

3 *Maclean's* magazine columnist Paul Wells on Global TV's "The West Block," Clark 2013

4 See for example, Sinclair, *Negotiating from Weakness: Canada-EU Trade Treaty Threatens Canadian Purchasing Policies and Public Services*. and Stanford, *Out of Equilibrium: The Impact of EU-Canada Free Trade on the Real Economy*.

5 'CIA - The World Factbook'.

6 Shrybman, 'Legal Opinion on CETA', 2.

7 Statistics Canada, Table 379-0028

8 Lemaire and Cai, *Lost Over the Atlantic?: The Canada-EU Trade and Investment Relationship*, 3.; also see Stanford, *Out of Equilibrium: The Impact of EU-Canada Free Trade on the Real Economy*.

9 OECD, *Moving Up the Value Chain: Staying Competitive in the Global Economy: Main Findings*, 20.

10 Ibid., 24.; OECD, *Economic Survey of Canada 2012: Overview*.

11 *Joint Scoping Group, Government of Canada - European Commission Joint Report on the EU-Canada Scoping Exercise* 2009, 2

12 As noted in a DFAIT study "the anticipated expansion of Canadian exports falls short of the expected rise in imports, and would likely cause the trade deficit to further deteriorate," (p. 37) and EU exports to Canada "will grow in high-tech, high value-added sectors" (p. 45) Cameron and Loukine, *Canada - European Union Trade and Investment Relations: The Impact of Tariff Elimination*.

13 CME - Manitoba Division, *An Economic Development Plan for the Manufacturing Sector in Manitoba A Strategic Plan to Enhance the Global Competitiveness of Manitoba's Manufacturing Firms*; Government of Manitoba, 'Manitoba Innovation Framework | Innovation, Energy and Mines | Province of Manitoba'.; Council on International Trade, 'International Trade Strategy for Manitoba'.

14 The Canadian dollar has appreciated in value against the Euro by about 25% over the past 10 years; most of this increase has occurred since 2008 (according to the currency calculator at: http://www.indexmundi.com/xrates/graph.aspx?c1=EUR&c2=CAD&days=365) and has been noted by the OECD as a key challenge for Canadian manufacturers OECD, *Economic Survey of Canada 2012: Overview*, 4.

15 European Commission and the Government of Canada, *Assessing the Costs and Benefits of a Closer EU - Canada Economic Partnership*, 37.

16 OECD, *Economic Survey of Canada 2012: Overview*, 4, 5.

17 *Joint Report on the EU-Canada Scoping Exercise*, 31.

18 European Commission and the Government of Canada, *Assessing the Costs and Benefits of a Closer EU - Canada Economic Partnership*, 31.

19 Statistics Canada: Table 031-0002 Flows and stocks of fixed non-residential capital

20 Statistics Canada, Table 031-0002 and author's calculations.

21 Stanford, *Out of Equilibrium: The Impact of EU-Canada Free Trade on the Real Economy*, 6, emphasis in original. Stanford provides a critical assessment of the Joint Stud-

ies methodologies. See also Stanford, 'Government's Got It Wrong on $12 Billion GDP Boost'.

22 Stanford, 'Government's Got It Wrong on $12 Billion GDP Boost', 27.

23 Stanford, *Out of Equilibrium: The Impact of EU-Canada Free Trade on the Real Economy*.

24 "The 19 % figure represents the cumulative appreciation of the Canadian dollar versus the euro up to autumn 2010 when the initial study was performed; intensifying financial instability in Europe, of course, has contributed to an even larger divergence in exchange rates. At present exchange rates, the Canadian dollar is worth 30 % more against the Euro than when the two sides started CETA negotiations. That 30 % appreciation (making Canadian products 30 % more expensive in European markets) is 14 times larger than the benefit Canadian products would get from EU tariff elimination. The appreciating currency is assumed to have no employment impact in primary sectors since those sectors typically sell into world markets with a single commodity price, usually denominated in U.S. dollars; the impact of a stronger Canadian dollar, therefore, is experienced in the form of lower landed incomes (rather than reduced quantities)" as in Jacobs, *Straightjacket: CETA's Constraining Effects on Ontario*, 50 , endnote 28.

25 See for example Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective*,.

26 See for example Poon, 'A Pivot to Asia? Canada's "Real" Globalization'.

27 Luce, 'America Reassembles Industrial Policy'; The Economist, 'The Global Revival of Industrial Policy'.

28 European Commission, 'EU Canada CETA - Landing Zones', 3.

29 'Manitoba Aboriginal and Northern Affairs | Province of Manitoba'.

30 Ibid.

31 Government of Manitoba, *Innovation, Energy and Mines: Annual Report 2011-2012*, ix.

31 Resource extraction (mining and oil and gas industries) in Manitoba produces 4.4% of provincial GDP but provides less than 1% of the employment in the province (5,400 jobs). Statistics Canada, Tables 379-0028 and 282-0008, author's calculations.

33 See for example, Bebbington et al., 'Contention and Ambiguity: Mining and the Possibilities of Development'.. On the mining industries record profits see PricewaterhouseCoopers, *Mine: Riding the Wave*.

34 For example, on the social and environmental costs of mining see Mining Watch, 'MiningWatch | Changing Public Policy and Mining Practices to Ensure the Health of Individuals, Communities and Ecosystems'.

35 See for example, McMahon, *The World Bank's Evolutionary Approach to Mining Sector Reform*, 7.

36 World Bank Group, *Taxation as State-Building: Reforming Tax Systems for Political Stability and Sustainable Economic Growth: A Practitioner's Guide*, 44.

37 Canada - EU, 'Canada-EU Comprehensive Economic and Trade Agreement: Draft Consolidated Text, as of January 13, 2010', 149–150.

38 Canadian Chamber of Commerce et al., 'Cdn. and EU Businesses Call for Sucessful Conclusion of CETA'.

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40 On the new federal immigration programme see for example 'Skilled Trades Stream Targets 3,000 Foreign Workers in 2013 - Canada - CBC News'.

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42 Manitoba Department of Aboriginal and Northern Affairs, 'Northern Development Strategy (NDS)'.

43 Ibid.

44 Ibid.

45 Manitoba Hydro, 'Wuskwatim Project Development Agreement' Schedule 10-1 .

46 See specifically the EU's "State of the Play" document page 7 (http://www.lapresse.ca/html/1633/Document_UE_1.pdf) linked from the La Presse 'Négos Canada-Europe'.

47 WTO, 'Government Procurement'. and author's calculation based on Statistics Canada Table 384-0001, 2010 Manitoba GDP data.

48 Moore and Hunter, 'N.S. and B.C. Premiers Hail "Olympic" Shipbuilding Victories'.

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50 See the "EU Report on G-20 Protectionist measures" for a comprehensive list of resent measures EU Directorate-General for Trade, 'EC Report on G-20 Protectionist Measures'.

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52 'Global Trade Alert | China: Accreditation of Suppliers of Certain High-tech Products.'

53 National Conference of State Legislatures, 'Buy American Provisions in the American Recovery and Reinforcement Act: A Summary'.

54 Canada - EU, 'Canada-EU Comprehensive Economic and Trade Agreement: Draft Consolidated Text, as of January 13, 2010'.

55 Sinclair, *Negotiating from Weakness: Canada-EU Trade Treaty Threatens Canadian Purchasing Policies and Public Services*, 12.

56 Trade Justice Network, *Is CETA Good for Cities?: Debunking the Myths About the Benefits of EU-Canada Free Trade*, 2, 3. For example, according to the Trade Justice Network, "while it would be possible to stipulate the purchase of recycled paper on environmental grounds, it would not be permissible to stipulate the purchase of locally or regionally produced food or materials, even if based on environmental considerations, such as reduced greenhouse gas emissions from transport. Similarly, while it would be permissible to require that prospective suppliers employ a certain number of women, minorities, or members of disadvantaged groups, it would not be permissible to require that they employ *Canadian* or *local* women, minorities or members of disadvantaged groups." (http://tradejustice.ca/pdfs/CETAMythsEN.pdf)

57 Canada - EU, 'Canada-EU Comprehensive Economic and Trade Agreement: Draft Consolidated Text, as of January 13, 2010'.

58 Sinclair, *Municipalities, Progressive Purchasing Policies and the Canada-EU Comprehensive Economic and Trade Agreement (CETA)*, 2.

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61 Reeve Consulting for Municipal Collaboration for Sustainable Purchasing, *The 2011 Report on the State of Municipal Sustainable Procurement in Canada*, 3.

62 PRA Inc. Research and Consulting, *Buy Manitoba Food Survey*, 24.

63 Farm to Cafeteria Working Group, *Provincial Local Food Procurement Policy: An Opportunity for Manitoba*, 2.

64 Beatty and Thumman, 'Build a Bridge Across the Atlantic'.

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67 Grootendorst and Hollis, *The Canada-European Union Comprehensive Economic & Trade Agreement An Economic Impact Assessment of Proposed Pharmaceutical Intellectual Property Provisions*, 9.

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69 Grootendorst and Hollis, *The Canada-European Union Comprehensive Economic & Trade Agreement An Economic Impact Assessment of Proposed Pharmaceutical Intellectual Property Provisions*, 3.

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87 Scoffield, 'EU Wants Investor Compensation If Businesses Hurt by Canadian Policies'.; see also the EU documents European Commission, 'EU Canada CETA - Landing Zones', 9.

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