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Straightjacket

CETA's Constraining Effects on Ontario

John Jacobs

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Executive Summary

THE GOVERNMENTS OF Canada and the European Union (EU) are in the final stages of negotiating a sweeping agreement that would impose unprecedented constraints on federal, provincial, territorial and municipal governments' capacity to put public interests ahead of corporate interests.

This report examines the potential impact the Canada-EU Comprehensive Economic and Trade Agreement (CETA) could have on Ontario. It concludes CETA would serve as a straightjacket for Ontario from an economic, social, political and environmental perspective. CETA would remove tariffs on goods and services, prevent 'buy local' initiatives, threaten public services and constrain governments' purchasing decisions. It could exacerbate the existing trade imbalance between Ontario and the EU, threaten tens of thousands of Ontario jobs and cast a fear of litigation chill on government initiatives.

The report takes Ontario's economic and fiscal challenges into account, only to find CETA would make things worse.

CETA Would Deepen Ontario's Trade Imbalance With the EU and Hasten Deindustrialization

Between 2000 and 2011, the contribution of the manufacturing sector to Ontario's Gross Domestic Product declined from 23% to 15%, leading to a loss of more than 300,000 jobs. This deindustrialization is reflected in trade between Ontario and the EU. Ontario's exports are dominated by unprocessed and barely processed primary products such as gold, nickel and uranium.

Due in part to a 400% increase in price, gold is by far Ontario's largest export to the EU. It currently accounts for 55% of Ontario's exports to the EU, compared to just 2% in 2002. Record gold prices are partly covering up a large underlying bilateral trade deficit. In 2011, trade with the EU produced a deficit for Ontario of about $1.5 billion. If we remove gold sales, however, the trade deficit swells to more than $12 billion. In effect, with gold out of the equation, Ontario imports $2 dollars worth of EU goods for every $1 it exports to the EU. This makes Ontario's already imbalanced trade relationship with the EU highly vulnerable to the volatility of gold prices.

Ontario is increasing exports of goods produced through resource extraction -- a low employment intensity sector of the economy -- while increasing imports of manufactured goods, which is a higher employment-intensity sector. While mining has become Ontario's premier industry contributing exports to the EU, it has not offset the jobs lost in manufacturing. Over the past decade, mining has only directly created 6,600 new jobs and currently employs 25,000 people — less than 0.5% of Ontario's total employment.

Meanwhile, 88% of the EU's top 25 exports to Ontario consist of high value-added manufactured products such as pharmaceutical drugs, motor vehicles and aircraft engines.

This report concludes that CETA would only hasten these trends. By constraining the application of policies that promote value-added manufacturing industries, CETA will entrench Ontario's increasing dependence on resource exports. The agreement will also further dampen manufacturing employment. Projections that take into account the removal of tariffs, the record of past free trade agreements, and the impact of the high Canadian dollar indicate that Ontario could lose a net total of 13,000 to 68,500 jobs as a result of the implementation of CETA.

CETA Would Increase Pharmaceutical Drug Costs

As a prerequisite to CETA, EU negotiators are calling on Canada to extend patent protection for brand-name pharmaceuticals. These patent extensions would increase drug costs for individual consumers, employer-funded benefit plans and public health care programs. Based on the estimated impact of these measures on overall Canadian pharmaceutical costs, private health plans and consumers in Ontario would pay an additional $672 million annually and it would cost the provincial drug plan an additional $551 million a year. The total burden on Ontarians would exceed $1.2 billion a year.

These costs would also have broader economic and employment implications. The additional cost to the health care system (if offset through incremental spending cuts to other program line items) could result in a loss of 9,300 health care-related jobs in Ontario and a decrease of $661 million in economic activity in the province. A province already struggling to manage its economic and fiscal affairs can ill afford these job losses and increased costs.

CETA Would Expose Provincial and Municipal Governments to Greater Litigation Risk

Canadian negotiators propose to include NAFTA's investor-state dispute resolution mechanism, which enables foreign investors to directly sue national governments for potential losses caused by government policies and regulations. Claims are considered and decisions rendered by unaccountable appointed tribunals operating outside of national legal systems. Under NAFTA, dozens of actions have already been launched by foreign corporations against the Canadian government. Several of these have been either decided against Canada or settled out of court, with monetary damages totalling more than $157 million. One investor has served notice of intent to pursue a $775 million challenge under NAFTA related to Ontario's Green Energy Plan. CETA would increase the likelihood of this kind of litigation.

Virtually any measure that negatively affects the projected profitability of a foreign corporation operating in Canada can potentially be defined as "expropriation" or unfair treatment under the wide-ranging language of such investor rights agreements. Worse still, this undemocratic mechanism results in a chill effect on policy development on the part of governments at all levels. In addition to ensuring that proposed policy changes are constitutional and beneficial, under CETA governments would also have to consider whether a new policy could result in expensive, risky litigation in a parallel tribunal system established solely for the benefit of foreign corporations.

Provincial and municipal governments will face even greater risk exposure, given the federal government's declaration that future liabilities awarded under NAFTA resulting from policy measures implemented at the provincial or sub-provincial level will not be the federal government's responsibility but, rather, the responsibility of those lower level governments. This step will add to the cost of public services in provinces and municipalities, especially once this investor-state dispute mechanism is entrenched in CETA.

CETA Would Prohibit Industrial Development and 'Buy Local' Initiatives

Negotiators are intent on curtailing proactive policies that support industrial development and prohibiting "buy Ontario" policies and other supports for local producers. In Ontario, procurement by all levels of government amounts to $60-$90 billion annually, providing governments with considerable economic clout. Under existing free trade agreements, public expenditure is one of the few remaining policy tools provincial and municipal governments have at their disposal to directly foster domestic economic development, increase productivity, promote environmental policies and support disadvantaged communities.

The Green Energy Act, for example, seeks to transition Ontario away from coal-fired electricity generation, in part through preferential purchases of local renewable energy. These renewable energy companies are required to meet high provincial content levels in their energy projects. Similarly, provincial and local governments have supported the creation of manufacturing jobs through public transit equipment purchases under the requirement that publicly funded transportation equipment have at least 25% Canadian content. Despite these — and many other — policy successes, CETA specifically prohibits procurement policies that promote local development or the use of domestic content, even if the contracts are open and non-discriminatory to foreign bidders.

The Government of Ontario is also under pressure to submit its crown corporations and municipal governments to CETA rules. This sweeping degree of CETA coverage could include airports, energy providers, ports and rail transportation, and municipal water and wastewater facilities. CETA would completely trump domestic content rules. Not surprisingly, the provincial government is facing resistance from Ontario municipalities, 38 of which have passed motions expressing concerns about the impact of CETA on local governments.

The past decade has witnessed a shift in Ontario's trade relationship with the EU, a relationship that is increasingly imbalanced. Instead of strengthening sorely needed industrial policy tools and protecting public resources, this report illustrates how CETA would subordinate the province's economic future to the priorities of private investors. CETA is more aggressive than previous trade agreements in subjecting democratically elected governments, especially at the sub-national level, to the constraints of international trade and investment law. The resulting job losses, higher drug costs, regulatory chill, and erosion of public services would be burdensome for the people of Ontario. Agreeing to CETA would also constrain the democratic responsibility of governments to promote the interests of citizens and communities.

Introduction

CANADA'S FEDERAL GOVERNMENT is in the process of negotiating a Comprehensive Economic and Trade Agreement (CETA) with the European Union (EU). The proposed agreement is sweeping in nature, laying out terms and conditions that could significantly hinder Canada's economic future. It would impose unprecedented constraints on economic policy affecting all levels of government in Canada.

Free trade agreements have become the centrepiece of economic policy under Prime Minister Stephen Harper's federal government. But CETA is much more than simply a trade agreement. According to the head of the EU trade delegation, CETA is a "very, very ambitious" initiative.[1] It goes well beyond the removal of tariffs on goods and liberalizing international services trade. CETA, part of the 'new generation of agreements,' targets procurement, public services, standards, regulations, and labour mobility.[2] The proposed agreement seeks to provide investors and corporations with increased rights and to curtail the activities of provincial and municipal governments.

If successful, CETA will become the template for Canada's future trade and investment agreements and will have an even greater impact on governments, the economy and communities than previous free trade agreements. An agreement of this import should be the subject of open public discussion, but CETA is being negotiated mostly in secrecy, without public scrutiny and debate.[3]

Like all free trade agreements, CETA is presented on the assumption that provinces, communities and citizens inherently benefit from free trade regardless of regional or sector-specific economic conditions. Ontario is facing a number of challenges that put these assumptions into question. In the context of industrial decline and a precarious post-recession fiscal position, provincial and municipal governments in Ontario face pressure to revitalize the province's economy while dealing with the effects of austerity budgeting. At the local level, citizens and communities are calling on municipal governments to support local economic development and environmental sustainability initiatives. Under the auspices of public service reform, the provincial government has called for an increasing role for the private sector in service delivery. These real world factors are the background against which potential impacts of CETA should be measured.

This paper assesses CETA in terms of its potential impact on manufacturing and employment, public services, and the capacity of governments and communities to use procurement and other policy tools to promote local economic development and the transition to a more sustainable economy. It also looks at the potential effects of exposing sub-national governments to expanded litigation risk as well as limiting the ability of governments at all levels to put the interests of the public ahead of corporate profit-seeking.

CETA's Potential Impact on Ontario Manufacturing

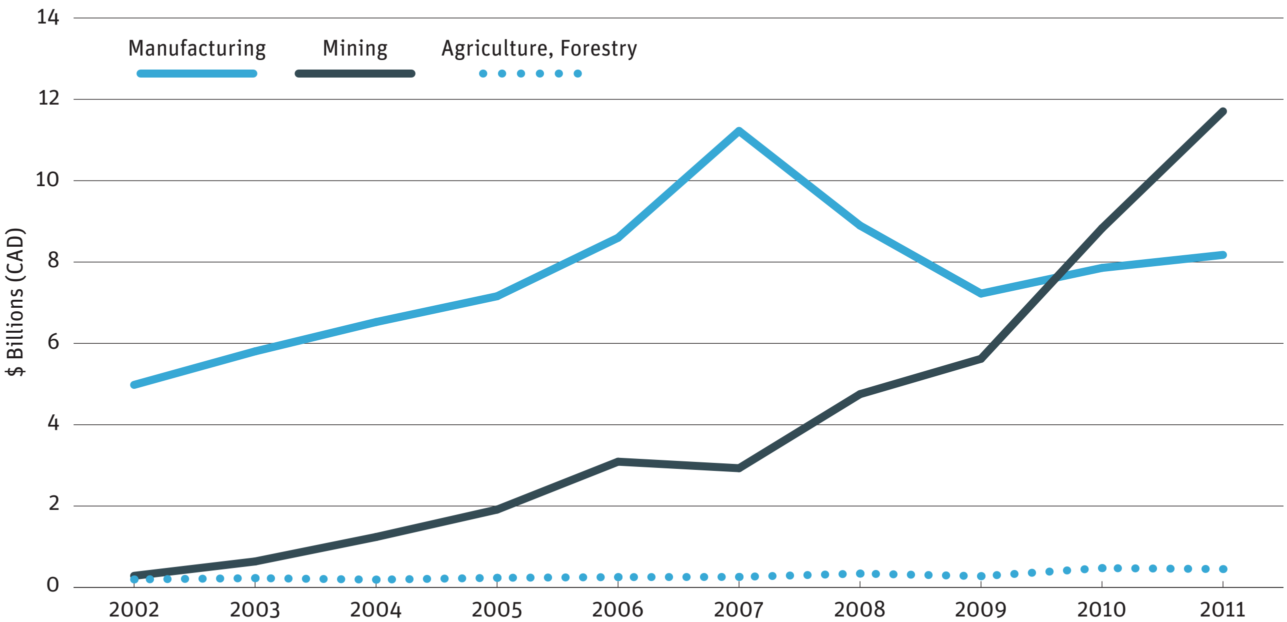
ANY REALISTIC ASSESSMENT of the potential impact of CETA needs to be grounded in analysis of the existing trade structure, rather than relying on assumptions about the supposedly inherent benefits of free trade.

Ontario's industrial base has eroded significantly over the past decade. Between 2000 and 2011, the manufacturing sector's contribution to Ontario's GDP declined from 23% to 15%, leading to a loss of more than 300,000 jobs.[4]

This shift in the provincial economy is reflected in the pattern of trade between Ontario and the EU. In 2002, more than 90% of the value of Ontario's exports to the EU consisted of manufactured goods. By 2011, manufacturing only accounted for 40% of provincial exports to the EU (see *Figure 1*). Ontario's exports to the EU are now dominated by the mining industry. On a product basis, unprocessed and barely processed primary products now account for 85% of the value of Ontario's top 25 product[5] exports to the EU (see *Table 1*).[6]

Overall, Ontario–EU trade has witnessed a reversal of the trade pattern that was established in the late-twentieth century, which helped establish Ontario as an economic powerhouse. Over the past decade, Ontario's exports to the EU have been deindustrialized. Ontario exports mostly unpro-

FIGURE 1 Ontario Exports to EU (By Industry, NAICS Codes)



Source Author's calculations from Industry Canada, Trade Data Online, Trade by Industry

cessed natural resources while importing relatively high-tech, high-priced products from Europe.

Ontario's current top five exports to the EU are gold, nickel, uranium, precious metals scrap and diamonds, whereas in 2002 the top 5 exports to the EU were helicopters and planes, nickel, turbo-jets and other gas turbines, telecommunications sets and various parts and accessories. In contrast, the EU's primary exports to Ontario are pharmaceutical medications, motor vehicles, gold products, turbo-jets and propellers and blood product preparations (see *Table 1*). Value-added manufactured goods account for 88% of the value of the EU's top 25 exports to Ontario.

EU exports to Ontario are also much more diversified than Ontario's exports to the EU. For example, the top five EU exports to Ontario account for 29% of the EU's total exports to the province, whereas Ontario's top five exports account for 68% of total provincial exports to the EU.[7] Ontario exports to the EU are highly geographically concentrated, while imports from the EU are broad-based. Seventy-three percent of Ontario exports to the EU go to the United Kingdom (92% of these exports to the UK are in the form of unprocessed or barely processed commodities). Only 18% of EU imports to

TABLE 1 Ontario: European Union Trade by Product (2011) HS4 Codes, $CAD thousands

Ontario Exports to EU	2011	EU Exports to Ontario	2011
7108 – Gold	**11,262,084**	3004 – Medications	3,490,861
7501 – Nickel	**973,553**	8703 – Motor Vehicles	1,187,659
2844 – Uranium	**732,484**	**7108 – Gold**	**606,982**
7112 – Precious Metals Scrap	**574,430**	8411 – Turbo-Jets, Propellers &Turbines	568,067
7102 – Diamonds	**417,422**	3002 – Blood and Blood Preparations	505,283
8411 – Turbo-Jets, Propellers & Turbines	347,979	**2709 – Crude Petroleum**	**469,898**
3004 – Medications	298,917	8708 – Motor Vehicle Parts	438,739
1201 – Soya Beans	**225,053**	2934 – Other Heterocyclic Compounds	322,147
8542 – Electronic Circuits	221,295	9018 – Medical Instruments and Appliances	286,610
2710 – Petroleum Products	**204,905**	8502 – Electric Generating Sets and Converters	284,287
8803 – Helicopter/Airplane/Spacecraft parts	202,306	2204 – Wines	272,824
8517 – Telephone Sets	184,024	**2710 – Petroleum Products**	**272,556**
8471 – Magnetic/Optical Readers	174,078	9021 – Orthopaedic and Other Appliances	244,578
7118 – Coin	158,717	8431 – Machinery parts	241,523
3002 – Blood Preparations Etc.	124,783	8803 – Helicopter & Airplane parts	222,496
8802 – Helicopters, Airplanes etc.	124,107	8517 – Telephone Sets etc.	215,281
8477 – Rubber/Plastic Working Machinery	117,633	8481 – Taps, Valves for Pipes/boilers etc.	194,428
8483 – Transmissions etc.	102,321	2208 – Spirits and other Alcoholic Preparations	180,537
8525 – Transmission Apparatus	101,933	8483 – Transmission Shafts & cranks etc.	172,532
9013 – Optical Devices, Appliances etc.	91,645	2203 – Beer	169,570
8703 – Motor Vehicles	84,565	8413 – Pumps for Liquids etc;	164,552
8431 – Machinery Parts	76,264	8536 – Electrical Apparatus' for connecting etc.	162,095
3304 – Beauty or Make-up Preparations	75,288	3304 – Beauty or Make-up Preparations	153,896
8528 – Monitors & Projectors	73,557	8429 – Heavy Equipment (bulldozers etc.)	139,346
8708 – Motor Vehicle Parts	68,411	3006 – Pharmaceutical Goods	136,845
Sub-Total	**17,017,753**	**Sub-Total**	**11,103,593**
Others	**3,461,758**	**Others**	**10,813,849**
Total (All Products)	**20,479,512**	**Total (All Products)**	**21,917,442**
Primary Commodities Top 25 (In Bold)	14,389,931	Primary Commodities Top 25 (In Bold)	1,349,436
% of Top 25 Exports	85%	Primary Products as % of top 25	12%
Trade Balance	- 1,437,930		
Trade Balance (Without Gold)	-12,093,032		

Source Industry Canada, Trade Data Online by Industry and author's calculations

Ontario originate in the UK, while the rest (82%) come in the form of manufactured goods from the rest of the EU. [8]

The trade challenge for Ontario: how can the province use exports (including exports to Europe) to contribute to a revitalization of its industries, in the context of a trade pattern which is increasingly reliant upon raw resource extraction? It is not at all clear that CETA, with its multifaceted restrictions on government policy capabilities, will enhance Ontario's ability to break out of a growing dependency on exporting unprocessed resources. In fact, CETA will almost certainly lock Ontario into a pattern of continued deindustrialization.

Gold Exports Epitomize Emerging Ontario-EU Trade Pattern

Gold is by far Ontario's most valuable export to the EU.[9] It accounts for 55% of the value of Ontario's exports to the EU, up from 25% in 2007 and just 2% in 2002. The rapid rise in the value of gold exports is, for the most part, due to the more than 400% increase in the price of gold over the past decade.[10]

Record-high gold prices mask an important underlying bilateral trade imbalance between Ontario and the EU. Out of a two-way flow of more than $40 billion in trade, Ontario experienced an overall trade deficit with the EU of just under $1.5 billion. However, removing gold from the trade equation reveals Ontario exports $9.2 billion worth of goods and imports $21.3 billion worth of goods. That's a trade deficit of more than $12 billion in Ontario-EU trade in 2011.[11] In other words, if we take gold out of the equation, Ontario imports more than $2 worth of EU goods for every $1 it exports to the EU. For the most part, Ontario, and by extension Canada, are relying on gold to cover for a large bilateral trade deficit with Europe. The Ontario-EU trade pattern is clearly advantageous for EU exporters, who enjoy stronger sales from a more diversified and value-added portfolio of industries, but it raises serious questions about its long-term impact on the Ontario economy.

Gold's lead role in Ontario's EU exports exemplifies the challenges posed by a reliance on primary commodity-based exports. Gold prices are at close to record highs, but mineral and metal prices tend to be volatile and thus make the provincial economy vulnerable to price swings.[12] Since the size of Ontario's trade deficit with Europe is so susceptible to the volatility of gold prices, every decline in gold prices will only amplify the deficit.

Mining is capital intensive and provides relatively few direct and indirect economic benefits. It comes with significant social and environmental costs.[13] And, while the jobs are well-paid, employment numbers in Ontario's mining sector are low compared to other industries. For example, every $1 billion in mining shipments is associated with the employment of 1,550 workers. In contrast, every $1 billion in manufacturing shipments supports 4,270 jobs.[14] The decline in provincial manufacturing has cost more that 300,000 jobs over the past 11 years, falling from 19% of Ontario employment in 2000 to less than 12% in 2011. While mining activity has displaced manufacturing as Ontario's main EU-oriented export industry, it has only produced 6,600 new jobs in the province during the same period.[15] The mining sector currently employs 25,000 people — less than 0.5% of total Ontario employment. The service sector has picked up some of the employment slack created by the decline in manufacturing, but that sector produces, on average, lower paying, lower productivity jobs.[16] To a significant extent, jobs have moved from manufacturing to lower wage sectors of Ontario's economy.

The structural shift in Ontario's exports to the EU, and the accompanying trade deficit, have long-term employment implications. Ontario is increasing exports of goods produced through resource extraction, a low-employment intensity industry, while increasing imports of manufactured goods, a more employment-intensive industry. In effect, EU exports to Ontario are displacing employment opportunities in the province, which will exacerbate the long-term employment difficulties facing Ontario.

Mineral exports also contribute to exchange rate volatility, since increases in commodity prices or global demand put upward pressure on the Canadian dollar. This can increase the cost of other national exports, making, for example, manufactured goods more expensive for foreign buyers and contributing to a decrease in non-resource exports.

The provincial government appears intent on increasing its reliance on mining, recently unveiling plans to open up the province's north for mineral exploration and development.[17] But there are questions about the long-term sustainability of a mining-based export regime. Mining activity is based on the depletion of a non-renewable resource, and hence is limited by the accessible mineral reserves. New discoveries can add to known mineral reserves, but according to the mining industry, in spite of historically high levels of exploration "there has been a marked decline in proven and probable Canadian mineral reserves. …Nickel reserves have fallen by more than half. Gold reserves in 2009 [are at] around half of 1996 levels."[18]

At the current rate of extraction, known Canadian gold reserves will be depleted within 8–10 years.[19]

Ontario's reliance on gold exports in its bilateral trade with the EU speaks volumes about the structural shifts taking place in the provincial economy. The traditional approach to economic development has been to focus on natural resource exports in the early stages, then graduate to value-added industries, such as manufacturing, that are based on increasing value, productivity and innovation. Canada successfully made this transition during the latter half of the twentieth century, and nowhere in Canada was the success of this strategy more evident than in the expansion of manufacturing in Ontario.

The decline in manufacturing and the onset of large, chronic trade deficits coincides with the promotion of an aggressive free trade negotiating agenda by the federal government. By restricting policy flexibility, trade and investment treaties constrain governments' capacity to foster economic diversification and productivity enhancement through proactive industrial and sector development policies. Rather than promoting value-added economic activity, the federal government has turned over economic decision-making to increasingly unregulated multinational investors. Not surprisingly, investors have prioritized the quick extraction and export of Canadian non-renewable resources, such as oil, gas and minerals, rather than investing in a more balanced vision for Canada's long-term economic sustainability. Between 2002 and 2011, capital investment in the mining industry (not including oil and gas) in Canada increased by 350% while investment in manufacturing declined by 16%.[20]

Under this strategy, Ontario's economy has reverted to primary trade linkages, exemplified by the export of gold to the EU in exchange for high-tech manufactured products. Resource extraction and export have always been a key component of Canada's economic development, and will continue to be. The challenge is to ensure the sector contributes to employment, economic diversity and productivity within a sustainable economy. Fostering a balance between the export of unprocessed resources and the development of value-added manufacturing capacities will be key to increased productivity, innovation and employment. Based on the historical experience of Canada's other trade agreements, CETA will almost certainly reinforce the deindustrialization trend that is already so apparent in Ontario's bilateral trade relationship with the EU.

Ontario's Economic Structure and CETA

Ontario would benefit from a long-term economic strategy that revitalizes the manufacturing sector and creates new, well-paying jobs. But does CETA fit the bill? Modern trade and investment treaties prohibit precisely the supportive industrial and trade policy tools that have proven effective in facilitating value-added, productivity-enhancing economic activity. Such agreements limit governments' capacity to foster linkages between economic sectors, such as mining and manufacturing, and to stimulate production and exports within a broader range of sectors than non-renewable mineral resources.

In terms of the removal of existing tariffs, Ontario has little to gain from CETA. Tariffs on Canada–EU trade are already low by historical standards. Canadian tariffs on merchandise imports are higher than corresponding EU tariffs: the weighted average Canadian tariff on imports from the EU is 3.5%, while the EU tariff on imports from Canada is just 2.2%.[21] This indicates that Canada stands to gain less from CETA, since its exports derive fewer benefits from tariff elimination. The fact that Ontario already exports fewer manufactured products to the EU than it imports, as noted above (*Table 1*), reinforces the fact that the EU has more to gain from CETA. Even the Joint Study commissioned by Canada and the European Union confirms EU exports to Canada would grow more than Canada's exports to the EU, and cites research that concludes EU exports to Canada "would grow primarily in the high-tech, high value-added sectors."[22] The Joint Study acknowledges Canada's bilateral trade deficit with the EU will increase after CETA, with the expansion of EU exports to Canada projected to be twice as large as the expansion in Canada's exports to the EU.[23]

Despite findings predicting a deepening trade imbalance, the study optimistically asserts Canada will benefit from a reallocation of resources within Canada's economy and an assumed improvement in Canada's trade with other countries. It assumes Canadian workers will adjust to the loss of jobs in trade-affected industries by finding more productive work in other sectors of the economy. This conclusion is derived solely from the Joint Report's modeling assumption of sustained full employment before and after CETA is implemented. The case made for CETA is based on optimistic economic models and assumptions regarding the perfectly competitive and efficient operation of deregulated markets. The economic simulation results reported in the Joint Study "amount to an *assertion* that free trade will produce mutual economic gains, not a *demonstration* that this will be the case."[24]

TABLE 2 Projected Employment Impacts of CETA on Ontario

Sector	NACIS Code	Ontario Employment	Employment Change: A. Tariff Elimination	Employment Change: B. Experience of Other FTAs	Employment Change: C. $C Appreciation + Tariff Elimination
Agriculture	111,112,115	84000	938	3774	938
Mining	212 ex 2121	16534	-0	5378	0
Processed Foods	311	84122	-3340	-770	-4846
Beverages & Tobacco	312	11828	-1010	-1945	-2643
Textiles	313,314	7703	-407	-578	-869
Wearing Apparel	315	7360	-1173	-845	-2019
Leather Products	316	802	-438	-602	-802[29]
Wood Products	321	15912	-35	185	-365
Paper Products, Publishing	322,323	48344	0	738	-1001
Petroleum & Coal Products	324	5530	-16	-92	-104
Chemical, Rubber, Plastic Products	325,326	87185	-1347	-11214	-11276
Mineral Products nec	327	19844	-217	-771	-773
Ferrous Metals	3311	12798	-18	-1034	-970
Metals nec	331 ex above	14422	24	444	-510
Metal Products	332	64708	-674	-2397	-3359
Motor Vehicles & Parts	3361,3363	86345	-3066	-5957	-7878
Transportation Equipment nec	336 ex above	17146	44	194	-3736
Electronic Equipment	334,335	65202	-55	-4022	-12590
Machinery & Equipment nec	333	51834	-721	-8225	-11092
Manufactures nec	31-33 ex above	51113	-1438	-2823	-6288
Total			**-12952**	**-30562**	**-68579**

Source Author's calculations based on Stanford 2010 (p. 34), Statistics Canada CANSIM Tables 281-0024 and 282-0008.

A more realistic assessment of the potential impact of the agreement should start from actual economic and trade data, not unrealistic modeling assumptions. Previous bilateral trade agreements have not generated the economic benefits for Canada that their proponents promised and have tended to reinforce Canada's reliance on resource extraction rather than stimulate a more innovative economy.[25]

The potential impact of CETA on specific sectors of Ontario's economy can be estimated using more realistic and concrete methodologies, instead of the idealized "equilibrium" modelling techniques used in the Joint Report. *Table 2* projects the Ontario employment impacts of CETA, disaggregated by sector, based on the methodology utilized in a 2010 study of potential employment impacts of CETA on Canada as whole.[26] That study considered three scenarios. In the first, tariffs were eliminated on both sides, and the resulting changes in bilateral trade were estimated on the basis of assumed elasticity parameters. In the second, trade flows in each sector were projected on the basis of the average experience recorded in Canada's existing free trade agreements. In the third, trade effects were simulated on the basis of both tariff reduction and the recent strong appreciation of the Canadian currency versus the euro — an effect which is excluded from the equilibrium modeling reported in the Joint Report. In each scenario, changes in net trade flow were converted into employment effects on the basis of prevailing employment intensities of output in 22 different sectors in the economy.

These national estimates, built on more reliable assumptions, can be converted into Ontario-specific employment projections on the assumption that sectoral job losses or gains would be allocated across Canada in proportion to their initial share of total national employment. *Table 2* reports the initial job share for Ontario in each sector and summarizes provincial projections of employment change based on a disaggregation of the national estimates reported in the initial 2010 report.

On average, Canada imposes higher tariffs on merchandise imports, so it can be assumed that eliminating tariffs would disproportionately benefit EU exporters. This finding is confirmed in the results of Scenario A. Ontario has the potential to yield modest gains in employment in the agricultural sector, but those job gains are eclipsed by job losses in the manufacturing sector, where new imports from Europe displace more workers than can be supported by increased exports to Europe. The result is a net loss of almost 13,000 jobs in Ontario.

Based on an extrapolation to the European case of the average trade flow effects resulting from Canada's existing free trade agreements, the estimated employment impact on Ontario is even worse, shown as Scenario B. In practice, Canada's exports and imports to free trade partners have grown more quickly than is estimated on the basis of conventional "elasticity" estimates, like those embedded in Scenario A. However, on average, Canada's exports to free trade partners grow significantly more slowly than our imports from those partners — resulting in a deterioration in the average trade balance following the implementation of a free trade agreement.[27] Scenario B presents the employment impact in Ontario if those historical trends are repeated in the case of CETA. In this case both the mining and agricultural sectors could yield gains, but those gains can not make up for heavy job losses in manufacturing. Ontario could face a net loss of roughly 30,000 jobs.

A major problem with the equilibrium modeling methodology utilized in the Joint Report is its inability to consider macroeconomic and monetary factors, such as exchange rates. Scenario C presents the potential employment impact for Ontario based on the removal of tariffs as anticipated in CETA (Scenario A) and adds the impact of the substantial increase (19%) in the value of the Canadian dollar relative to the Euro in March 2009, when the intention to negotiate CETA was first announced.[28] Under Scenario C, the combination of tariff removal and the toll of an appreciating currency do tremendous damage to Canada's export industry. Ontario would incur almost 70,000 jobs losses in this most negative scenario. Indeed, because of the importance of manufacturing to Ontario's economy, it could be the hardest hit province in Canada.

The results, under any scenario, are troubling: a wide range of industries critical to Ontario's economic prospects experience major job losses. While the agriculture sector holds the potential to experience modest job gains, the food processing sector experiences significant losses of nearly 5,000 jobs under Scenario C. Very large potential job losses — more than 11,000 jobs each under Scenario C — could occur in the chemical, electronic, and machinery sectors, reflecting Europe's industrial dominance in those sectors. Ontario's crucial auto industry could also suffer a major blow under CETA. Auto trade between Europe and Ontario is essentially a one-way flow. Ontarians purchase almost $2 billion worth of automotive products from the EU — more than 10 times the value of what Ontario exports to the EU in automotive products. This imbalance would likely be exacerbated under CETA. There are almost no sectoral job winners in Ontario under CETA — just a broad and important range of losers. Agriculture and mining may enjoy enhanced sales to Europe. Some manufacturing sectors, such as aerospace or paper industries, may enjoy modest gains under some — but not all — of the scenarios listed above. In Scenario C, every single sector except agriculture experiences a contraction in jobs. This pessimistic conclusion reflects the real-world factors of Ontario's present trade conditions with Europe. Since Ontario exports mostly raw resources to Europe that will not experience market gains under CETA, there is virtually no upside to counter the job losses that could incur across most parts of Ontario's economy.

Public Services

ACCORDING TO ONTARIO'S Commission on the Reform of Public Services, "Ontarians have not yet grasped the extent to which the slow decline of this province's manufacturing base has undermined both its historic economic advantage relative to the rest of Canada and the provincial government's long-term ability to finance the public services they treasure."[30] Weak government revenues due to the manufacturing decline, tax cuts, and the ongoing fiscal fallout of the recession have led to calls for a reform of public services in Ontario. In the context of CETA, these reforms could have unintended, negative long-term consequences.

The capacity to maintain, reform and expand public services and social programs is essential to the promotion of the public interest and democracy. This is particularly true in the context of the heightened influence of multinational investors on public policy and their interest in commercializing services that are currently provided on a not-for-profit basis through the public sector.

The EU is home to some of the world's largest service sector multinational companies, which view federal, provincial and municipal services not as a reflection of a democratic commitment to protect the needs of the people but, rather, as an opportunity for corporate profit.[31] These firms are clear in their desire to gain access to government procurement. Indeed, a willingness by the Canadian side to liberalize access to public procurement at all levels was a precondition for the EU agreeing to participate in CETA discussions in the first place. This precondition brought about the direct participation, for the first time in Canada's history, of provincial representatives in an international trade negotiation. Investors in these firms have targeted access to public services in the areas of "infrastructure, civil works, transportation, energy, electricity generation, distribution and transmission, and water."[32] Opening all of these areas to private providers is one of the EU's top priorities in CETA negotiations, but opening these sectors could also increase the cost of Ontario public services, increase pressures for privatization in Ontario, and reduce provincial and municipal governments' democratic accountability to the electorate for public services.

Increasing Pharmaceutical Drug Prices

Pharmaceutical drugs represent Ontario's largest single import from the EU, worth $3.5 billion annually. Many of the world's major brand name pharmaceutical companies are headquartered in the EU and that side's negotiators are calling for increased intellectual property (IP) rights protection for pharmaceutical products as a core feature of CETA.[33] If this lobby is successful, Canada would have "the highest legislative or structural protection for new pharmaceuticals in the world."[34]

CETA would be the first Canadian bilateral trade agreement since NAFTA to include an IP chapter, and this chapter would go well beyond Canada's existing obligations under NAFTA and the World Trade Organization (WTO).

EU negotiators are making some very aggressive demands, including:

- 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.[35]

These proposals would extend the period of monopoly patent protection and market exclusivity for brand name drugs. Any combination of these changes would reduce the availability of cheaper, generic medicines and drive up costs to provincial governments and Canadian consumers.

Brand name drug companies claim that they need strong intellectual property protection to justify investing in Canada and to fund research and development. Yet these same companies have consistently failed to fulfill commitments to invest 10% of their sales in research and development in Canada.[36]

Drug costs are the fastest rising component of Canadian health care costs. Containing drug costs is essential to the fiscal sustainability of Canada's public health care system, not to mention to the financial well-being of Canadian households, many of which do not enjoy the protection of private or workplace drug coverage.

CETA's IP provisions could deal a damaging blow to the sustainability of Canada's universal health care system.[37] A study by two respected experts estimates these IP provisions would cost Ontario an additional $1.2 billion and Canadians an additional $2.8 billion in annual drug costs.[38] Private health plans and consumers would pay an additional $672 million annually and it would cost the provincial drug plan an additional $551 million a year — an amount which, according to the Drummond report on Ontario's public services, "would more than wipe out the savings achieved through the government's recent drug reforms."[39] Canada's premiers have raised these issues, calling on the federal government to compensate the provinces should CETA result in increased pharmaceutical costs.[40] This would hardly be considered a satisfactory response to the problem, since it would merely represent a different packaging of the same burden on Canadian taxpayers while boosting the profitability of Europe's pharmaceutical industry.

The costs of these changes would also have broader economic and employment implications. A recent economic study indicates that for every $1 million cut to health care services in Ontario, there is a loss of 17 jobs to the provincial economy and a loss of $1.2 million in provincial GDP.[41] On the basis of these estimates, we can project the economic and employment impacts if the cash-constrained Ontario government was to respond to this CETA-driven increase in provincial drug costs by cutting back other areas of health care. A $551 million reduction in health services spending to offset the additional pharmaceutical costs resulting from CETA would cause the loss of 9,300 jobs in Ontario and a decrease of $661 million in provincial GDP.[42] These are costs a province already struggling to manage its economic and fiscal affairs can ill afford.

General Pressures for Privatization

The Ontario government's 2012 budget lays out plans to privatize a variety of public services, ranging from preparation of official certificates (for example, birth certificates and drivers' licences) to oversight and inspection services, such as motor vehicle inspections.[43] Such initiatives are likely to result in a deterioration in the quality and accountability of service. Under CETA, however, this shift toward private delivery could lead to the permanent erosion of public services and increased costs to governments.

For example, investor-state arbitration processes (discussed below) could curtail any government initiative to return failed privatizations to public control and administration. A failed privatization recently occurred when the City of Hamilton took back the management of the city's water supply, following the failure of private contractors to meet promised targets.[44] The remunicipalization of services such as water would be susceptible to compensation claims by private investors for the loss of forecast profits.

CETA would also contribute to incremental privatization. The draft agreement contains an exclusion for government services that are "neither supplied on a commercial basis, nor in competition with one or more service suppliers."[45] But once these services include private sector or third-party participation, they become subject to CETA rules which "would trigger powerful rights for foreign multinationals to challenge any perceived bias, any local development conditions, and any attempt to halt or reverse the contracting out process."[46]

For example, the province's right to maintain alcohol distribution as a public service would be limited by CETA. Draft reservations indicate that the province has called for alcohol distribution to be protected from CETA coverage, but this proposed reservation (Annex I) only applies for as long as distribution is maintained as a public service.[47] If any part of the Liquor Commission Board of Ontario's (LCBO) existing monopoly is privatized, this part would be removed from CETA protection. Any attempt by future governments to return alcohol distribution to the LCBO would violate CETA's market access rules and open taxpayers to investor claims for compensation. In order to preserve the right of current and future provincial governments to restore or expand the activities of the LCBO, Ontario would need to make an Annex II reservation, which would not only exempt existing measures, but preserve the ability to take future measures that would otherwise violate CETA.

Associated rules in the draft CETA mean that the use of public private partnerships (P3s) in specific sectors would set permanent precedents. By bringing private investors into sectors of the economy that had been exclusively publicly funded and administered, P3 investments could open these sectors to claims by investors for continued investment opportunities in these sectors should a future government seek to return them to public administration and delivery.

In this light, CETA would undermine a future government's capacity to reverse the privatization of various services. CETA thus fundamentally constrains long-term delivery options for these services.

"While CETA may not force governments to privatize, giving new legal rights to multinational services corporations would facilitate commercialization and help lock in privatization. It would also interfere with the ability of future governments to expand or create new public services."[48] In effect, CETA would contribute to a diminishment of public services while enhancing private investor rights. In the context of ongoing multinational pressures for privatization, CETA could ultimately contribute to incremental privatization and undermine the capacity of governments to promote high-quality, accountable public services.

Government Litigation Risk

CANADIAN NEGOTIATORS ARE proposing that investment disputes arising from CETA be dealt with along the lines of the rules set out in NAFTA's Chapter 11. This mechanism enables investors to sue national governments for loss of anticipated profits caused by government policies and regulations. Claims are considered and decisions rendered by unaccountable, appointed tribunals operating outside of national legal systems. Only foreign companies have access to this parallel justice system. This investor-state mechanism has already resulted in more than 30 claims by investors against Canada, some of which are ongoing and five of which have resulted in investor wins. The cost of these judgments to the federal government amounts to more than $157 million in settlements and tens of millions in legal costs to defend itself.[49] CETA targets an even broader range of government functions — including those of municipal governments — for discipline under these provisions than does NAFTA. In turn, more of the economy and public services would be exposed to these anti-democratic, investor-state claims.

Claims made against the Canadian government under NAFTA have targeted a wide range of practices. Some investors have sought compensation for government environmental policies, another has challenged policies requiring oil and gas multinationals to invest in research and development.[50] In a recent Newfoundland and Labrador case, the tribunal ruled in favour of oil and gas companies, supporting their claim that the provincial government had no right to set minimum requirements for investment in local research and development.[51] Another investor has issued a notice of intent to bring forward a $775 million Chapter 11 challenge related to Ontario's Green Energy Plan, claiming the province's domestic content requirements discriminate against the American company (see Box 1 regarding Ontario's Green Energy Plan).[52]

The investor-state mechanism is strongly biased in favour of investors and investor rights. It opens the door to investor 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."[53] Virtually any measure that negatively affects the projected profitability of a foreign corporation operating in Canada could potentially be defined as expropriation under the wide-ranging language of Chapter 11-type measures.

European multinationals have already successfully pursued investor-state cases over failed and reversed privatization schemes in developing countries, winning damage awards of hundreds of millions of dollars for the breach of investor rights.[54] CETA would open the door to even more of these cases, targeting all levels of government within Canada.

The Conservative federal government has announced that any financial liabilities resulting from successful investor-state challenges to policy measures implemented at the provincial or sub-provincial level will be the responsibility of those governments — not the federal government.[55] This is clearly a case of the federal government, which retains sole responsibility under the Canadian constitution for international trade agreements, imposing its will on provincial and municipal governments.

Settling multimillion dollar claims from investors will increase the overall costs of public services for provinces and municipalities that dare to challenge pro-business policy. The very prospect of these law suits places a chill effect on governments wanting to revitalize and expand public services. Governments considering such initiatives would need to consider the possibility that their measures could attract litigation challenges under international trade agreements. Threats of investor-state claims by private insurance companies have already contributed to the abandonment of progressive public policies. For example, under pressure from investor threats, the governments of both Ontario and New Brunswick abandoned initial plans to implement public auto insurance.[56]

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 in Ontario.

Public Procurement

THE LATEST GENERATION of trade and investment treaties deal with many matters that are only peripherally related to trade. According to industry lobbyists, CETA is

> different from a traditional free-trade accord like NAFTA, where tariffs on goods and services are the targets. As a second-generation trade agreement, the Canada-EU arrangement will focus on non-tariff barriers like standards, procedures and regulations. When it comes into effect, CETA will be a template for the rest of the world to follow in negotiating second- or next-generation preferential trade agreements.[57]

The removal of these "non-tariff barriers" should be of particular concern to Ontarians, given the economic challenges the province faces. CETA would remove several of the few remaining levers available to provincial and municipal governments to promote regional and local economic development or to support various strategic policy initiatives, such as encouraging environmental sustainability.

Government procurement of goods and services continues to have a major impact on national, provincial and local economies. According to the WTO, purchases by various levels of government encompass between 10–15% of GDP within industrialized nations. By this reckoning, procurement in Ontario by federal, provincial, and municipal governments would account for $60–$90 billion annually.[58] This provides governments with considerable economic clout to shape the provincial economy and support strategic provincial industries.

Public spending has historically been important to increasing national industrial capacity through, for example, fostering and contracting domestic firms in the design and construction of large-scale infrastructure projects. A number of countries have recently attached "buy domestic" provisions to economic stimulus packages.[59] The U.S. government attached conditions to its economic stimulus spending measures in hopes that this would kick-start its faltering economy. Between 50–100% of the content of goods procured with program funding had to be manufactured in the United States.[60] Responding to a dramatic appreciation of its currency, in 2011 Brazil implemented a procurement policy stipulating that government agencies would pay up to 25% more for domestically produced manufactured goods which contain 40% or more domestic content from Brazil or its regional Mercosur trading partners.[61] In 2009, China implemented the National Indigenous Innovation Product Accreditation Work. Under this policy, government agencies and departments could purchase certain high tech products — computers and application equipment, communications products, modern office equipment, software, new energy and new energy devices, high-efficiency and energy-saving products — only from domestic suppliers.[62]

Among the existing free trade agreements signed by the Canadian government, procurement expenditure has been one of the few remaining policy tools left for provincial and municipal governments to directly foster economic development, boost productivity, promote environmental goals, and support disadvantaged communities. Not surprisingly, accessing the huge market for procurement is also attractive to foreign investors and suppliers. In fact, unconditional access to sub-national government procurement is one of the EU's highest priorities in these negotiations.[63] As one of Canada's largest and most lucrative procurement markets, Ontario is under considerable pressure to make sweeping concessions.

Because Canadian sub-national government procurement has been largely excluded so far from NAFTA and the WTO, provincial and municipal crown corporations are still able to explicitly favour local suppliers. They can also set terms and conditions (offsets) to promote local development through the procurement of goods and services. These can include requiring suppliers to provide local jobs, purchase local products and services, invest in local research and development, or economically boost marginalized groups and communities.

Ontario's Green Energy Act

The EU has taken direct aim at certain innovative Canadian government procurement policies, including those contained within Ontario's Green Energy Act. The Act is being portrayed by European and federal negotiators as an obstacle that is putting CETA negotiations in jeopardy.

The legislation, passed in February 2009, is intended to significantly boost the production and use of renewable energy in Ontario. By enabling the phase-out of coal-fired electricity generation within the province, it will clearly reduce greenhouse gas emissions and bring tangible environmental benefits on a local and global scale. It also aims to make Ontario a leader in green energy development by building a local renewable energy industry, creating thousands of new jobs and providing support for community control of renewable energy production.

The Act gives renewable energy producers assured rights to connect to the electricity grid. In order to increase the supply of renewable energy, it also guarantees long-term, premium prices that will spur new investment in renewable energy generation. These "feed-in tariffs" provide above-market rates for different forms of renewable energy. In order to qualify, renewable energy producers must meet minimum domestic content requirements.

The Ontario government predicts that these requirements will create thousands of local jobs. In addition, the Act provides for a range of regulatory and financial support to help local municipalities, cooperatives and Aboriginal communities build, own and operate their own renewable energy projects.

The EU strenuously objects to these domestic content requirements, even though contracts to procure renewable energy under the Act and to access the feed-in tariffs are fully open to European companies. In a confidential memo, the European Commission (which is negotiating CETA on behalf of the EU) outlined its objectives in opposing the Act: "In the short term, to convince the governments of Ontario and Canada to abandon the requirement to use domestically produced equipment to produce renewable electricity in order to benefit from high feed-in tariffs. In the medium term, to avoid the Ontario initiative becoming a precedent for other provinces some of which are on the verge of implementing similar schemes."[66] CETA negotiations have provided the Europeans with the ideal vehicle to intervene in Canadian internal affairs and to stop the development of innovative procurement policies not only within Ontario's renewable energy sector but across the country.

Canadian municipalities have recently collaborated to target more than $10 billion in annual local government procurement for sustainable purchasing. This policy places a "procurement priority not only on price, quality and service, but also on the environmental and socio-economic impacts of a product or service." This includes "purchasing to promote health and safety, local economic development, minority suppliers, social enterprises or Fair Trade products."[64]

Ontario's Green Energy Act (Continued)

Ironically, if CETA had been in place in the 1980s and 1990s, the European wind industry might not be the world leader it is today. The Danish wind industry, one of the world's most successful, was built through a combination of financial incentives and local content requirements. In order to spur wind energy development, the Danish government required utilities to buy wind-generated energy at highly subsidized rates. These rates were restricted to members of local cooperatives, living close to the turbines.

The policy was extraordinarily successful in increasing wind generation of electricity while simultaneously encouraging local ownership and acceptance of an environmentally friendly technology. In recent years, after the industry was established, more right-wing Danish governments have removed many of these local ownership requirements.

This economic and environmental success story brought lasting benefits to Denmark. Yet many of the policies Denmark used to launch its renewable energy industry would have been inconsistent with CETA and similar international trade and investment agreements. Incentives such as making the premium tariffs available only to purchases from locally owned cooperatives would conflict with non-discrimination rules requiring that foreign companies be treated no less favourably than domestic suppliers. The intricate web of regulations restricting the geographical location of windmill owners, their type of housing, their levels of power consumption and trade in wind energy shares were all designed to ensure local community ownership and control of Danish wind resources.

Through the Green Energy Act, Ontario has made a significant financial commitment to more desirable, renewable forms of energy. The domestic content rules enhance public acceptance and support for the challenging transition to renewable energy. In return for generous price premiums, wind and solar producers, whether domestic or foreign-owned, simply commit to create jobs and economic benefits within Ontario. This is a reasonable trade-off. The costs of the feed-in tariffs and guaranteed connections are shared by Ontario residents, and so too should the benefits.

(Excerpt from "Negotiating from Weakness" by Scott Sinclair)[67]

Various jurisdictions in Ontario have used "buy local" provisions in many other areas, too. In 2009, the Ontario government passed the Green Energy Act, which sought to facilitate the transition away from carbon-intensive sources of energy, such as coal-fired electricity generation, by fostering the development of local renewable energy sources. The Act encourages alternative energy generation by paying a preferential rate to local renewable energy providers (See Box "Ontario's Green Energy Act"). A key objective of the Act is job creation, which the Government of Ontario estimates could yield up to 50,000 jobs.[65] The job creation benefits of the program are enhanced by strong domestic content rules governing manufactured components.

Another important example of a proactive procurement strategy is the 25% Canadian content requirement in provincially supported purchases of public transit equipment. As Ontario enters an era of major new investments in public transit infrastructure, this provision is translating into substantial new opportunities for the province's transportation equipment manufacturing enterprises. For example, the Bombardier rail car facility in Thunder Bay, one of northern Ontario's largest industrial employers, has received billions of dollars worth of new orders under this policy — for subway cars and streetcars for the Toronto Transit Commission and passenger rail cars for the GO Transit system operated by the regional Metrolinx authority. The province's $17.5 billion "Move Ontario 2020" public transportation strategy for the Toronto–Hamilton corridor will deliver additional industrial benefits to Canadian transit and bus manufacturers. Indeed, that strategy explicitly references its goal to "promote economic development and protect Ontario's skilled manufacturing jobs" through the 25% Canadian content requirement.[68]

Similarly, various municipalities have "buy local" provisions that encourage, and in some cases require, publicly funded institutions to purchase locally grown and processed foods.

In 2008, Markham became the first municipality in Canada to adopt a local food procurement strategy.[69] The municipality's 2011 strategy recommends developing green jobs through "purchase agreements that create demand for green energy, local food production and processing, sustainable practices (e.g. green buildings)." It suggests Markham adopt a community target of 25,000 green jobs.[70] Other cities have followed suit in developing progressive policies to support local development, including Toronto, which has launched a process to encourage local food purchasing initiatives.[71]

At the provincial level, a bill requiring provincial government institutions that purchase more than $25,000 of local food annually has passed first reading.[72] Some universities, including the University of Toronto, and several school boards have developed procurement policies to support local food production capacity, jobs and environmental sustainability policies.[73]

Governments have a responsibility to promote community interests and build economic capacity. Procurement policies enable governments to ensure workers and regional businesses benefit from publicly funded purchases and, in the case of the Green Energy Act, facilitate a transformation in the province's energy generation by supporting the development and adaptation of innovative technologies.

CETA specifically prohibits procurement policies that are, according to a leaked draft text of the agreement, 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."[74] 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]."[75]

> Under such restrictions, 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.[76]

In effect, CETA rules discourage many socially responsible practices on the part of corporations. Governments are prohibited from choosing a contractor based on their record of contributing to local development. As explained by the Trade Justice Network, drafts of CETA indicate that "under CETA procurement chapter, 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).[77]

Ontario is under pressure from the federal government and the EU to include crown corporations and municipal government purchasing under CETA coverage.[78] According to the EU's initial request, the agreement should cover "all entities operating in the so-called M.A.S.H (also known as M.U.S.H.) sector (municipalities, municipal organization school boards and publicly funded academic, health and social service entities) as well as any corporation or entity owned or controlled by one or more of the preceding."[79] This would include airports, energy providers such as Hydro One, ports and municipal water and wastewater facilities (see Appendix 1 for full listing). All contracts above the threshold of approximately $300,000 for goods and services by sub-national governments would be included.[80] This sweeping coverage would, for example, completely undermine the content provisions of the Green Energy Act and the various municipal and institutional initiatives described above.

The provincial government is facing resistance from Ontario municipalities, 38 of which have passed motions expressing concerns about the impact of CETA on local governments (see Appendix 2 for listing of these municipalities).[81] Major cities — including Toronto, Mississauga and Hamilton — have called for a complete exemption from CETA. Municipalities are seeking assurances that their capacity to use procurement for policy objectives will not be negotiated away by a federal government seemingly desperate to reach a trade deal with a much stronger partner.

Conclusion

THE PAST DECADE has witnessed a shift in Ontario's trade with the EU. Provincial exports have been deindustrialized, creating an unbalanced pattern of exchange where Ontario increasingly exports gold and other raw materials in exchange for the EU's technologically advanced manufactured goods. This has contributed to massive job losses, a weakened provincial economy and increased pressure on public services.

CETA is just the latest in a series of trade and investment agreements being promoted by the federal government as economic development strategies. In practice, these agreements have undermined national and regional economic development capacity. CETA would only intensify the present economic malaise in Ontario and could have major implications for the future of Canada's largest economy. In the context of Ontario's recent deindustrialization, CETA would be a serious impediment to the province's urgent need to revitalize manufacturing and rejuvenate public services.

Rather than implement a development strategy that optimizes the use of industrial policy tools and public resources, CETA would leave much of the province's economic future to chance and to the self-interested decisions of foreign investors. The pressure is already mounting to remove proactive policy tools, such as the Green Energy Act and purchasing requirements favouring local suppliers. By deregulating public procurement, CETA will undermine municipal governments' capacity to ensure that a substantial portion of taxpayer dollars goes to building stronger communities by providing opportunities for local businesses and workers. Progressive economic policies from all levels of government are threatened by an ideology that places unregulated trade ahead of improving social and environmental conditions.

The adoption of CETA could create dire consequences for Ontario's future employment situation and the well-being of its residents. By providing increased intellectual property protections, CETA would increase the costs of public services, including significantly higher costs for pharmaceutical drugs. Given the pressures to privatize identified in this report, the adoption of CETA would also increase the vulnerability of public services and undermine the needed revitalization of these services in Ontario.

CETA goes far beyond previous trade agreements in subjecting workers and local businesses to the disciplines of international trade and investment law. Increased exposure to investor-state dispute challenges would further reduce government initiatives to bring in progressive economic, social, and environmental policies. The threat of corporate retaliation will create a chill effect with some governments, putting foreign commercial interests ahead of local needs.

The abdication of Canadian governments' democratic responsibility to promote the interests of citizens and communities will only exacerbate the economic, social and environmental pressures already facing the province of Ontario.

Appendix 1

EU-Canada Comprehensive Economic and Trade Agreement, Government Procurement, European Union's Initial Request to Canada (December 2009) as Related Specifically to Ontario

Annex 2: Sub-Central Government Entities

Pursuant to its proposal on uniform thresholds, the EC requests that Canada adopts the threshold of SDR (Special Drawing Rights) 200,000 for contracts for supply of goods and services of entities covered by this Annex.

(a) All sub-central government entities including those operating at the local, regional or municipal level as well as all other entities in all Canadian Provinces and Territories whose procurement policies are substantially controlled by, dependent on, or influenced by central, regional or local government and which are engaged in non-commercial or non industrial activities, including:

- 10 Provinces: Quebec, Ontario, Newfoundland and Labrador, Prince Edward Island, New Brunswick, Manitoba, Saskatchewan, Alberta, British Columbia, Nova Scotia
- 3 Territories: Yukon, Nunavut, Northwest Territories
- Ontario: Ottawa, Toronto, Hamilton, London, Richmond Hill, Kitchener, Vaughan, Brantford, Windsor, Markham, Greater Sudbury, Burlington, Oakville, Oshawa, St. Catherine's-Niagara, Sherbrooke, Thunder Bay, Kingston, Barrie, Guelph

(b) All entities operating in the so-called M.A.S.H (also known as M.U.S.H.) sector (municipalities, municipal organization school boards and publicly funded academic, health and social service entities) as well as any corporation or entity owned or controlled by one or more of the preceding.

Annex 3: All Other Entities

1. Airports

All entities, as per the above definition, which provide airport or other terminal facilities to carriers by air, including:

- Greater Toronto Airport Authority
- Ottawa McDonald-Cartier International Airport Authority
- Thunder Bay International Airport Authority

2. Transport

All entities, as per the above definition, which provide or operate networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable, including:

- Toronto Transit
- Metrolinx (Ontario)
- Ontario Transit
- OC Transpo (Ottawa)
- GO Transit

3. Ports

All entities, as per the above definition, which provide maritime or inland port or other terminal facilities to carriers by sea or inland waterway, including:

- Oshawa Harbour Commission
- Hamilton Port Authority
- Thunder Bay Port Authority
- Toronto Port Authority
- Windsor Port Authority

4. Drinking water

All entities, as per the above definition, which provide or operate fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water, or supply drinking water to such networks, including:.

- Toronto Water and Emergency Services
- Municipal water and wastewater treatment entities

5. Energy

(a) All entities, as per the above definition, which provide or operate fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity, or the supply of electricity to such networks including:

- Ontario Power Generation
- Hydro Ottawa
- Toronto Hydro
- Aurora Hydro Connections Ltd.
- Hamilton Hydro

Annex 4: Services

Based on the United Nations Provisional Central Product Classification (CPC) system, the EU requests Canada to offer bilaterally, in addition to the services already listed under Canada's current GPA commitments, the following services:

- Full coverage of 867, including engineering related scientific and technical consulting services and technical testing and analysing services
- Full coverage of 865, including financial management consulting services, public relations services and other management consulting services
- Full coverage of 886 "repair services incidental to metal products, machinery and equipment"
- 6112 "maintenance and repair of motor vehicles"
- 6122 "maintenance and repair of motorcycles and snowmobiles"
- 712 "other land transport services"
- 87304 "armoured car services"
- 73 "air transport services"
- 812 and 814 related to insurance services
- 864 "market research and public opinion polling services"
- 871 "advertising services"
- 88442 "printing and publishing services"
- 752 "Telecommunications services"
- 7512 "Courier services"
- 8868 "Repair and maintenance for maritime transport".

NB: The EU considers that the category "shipbuilding" falls under supplies. Should Canada consider shipbuilding as a service category (See Notes to Annex 4 of Canada's GPA commitments), the EU requests its opening.

Appendix 2

Ontario Municipalities Call for CETA Transparency and Exemptions

AS OF AUGUST 2012, as part of a growing list, 38 municipalities are calling for increased transparency in CETA negotiations and exemptions from CETA provisions.

Exemptions From CETA

The following 21 Ontario municipalities have passed motions calling for the Government of Ontario to exempt them from CETA coverage: Alnwick/Haldimand, Asphodel-Norwood, Cambridge, County of Brant, County of Essex, Drummond/North Elmsley, French River, Hamilton, London, Mississauga, Municipality of Trent Hills, New Tecumseth, Niagara Falls, Stratford, Oshawa, Pelee, Thorold, Thunder Bay, Toronto, Welland and Wellesley Township. The Hamilton Wentworth District School Board has also passed a motion calling exemptions from CETA coverage.

Increased Transparency and Conditions

The following 17 Ontario municipalities have passed resolutions calling for more transparency and the application of the Federation of Canadian Municipalities principals in CETA negotiations: Amherstburg, Barrie, Brampton, Brantford, Brockville, Caledon, Ingersoll, Kingston, Kitchener, Oakville, Ottawa, Peterborough, Quinte West, Region of Waterloo, South Frontenac, Waterloo and Windsor.

For information on the resolutions see: http://canadians.org/trade/issues/EU/index.html.

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Notes

1 Cattaneo, "EU Warming to Oil Sands | Financial Post"; Beatty and Thumman, "Build a Bridge Across the Atlantic."

2 Ibid.

3 Mason, G., "Trade Talks Ain't What They Used to Be (open)."

4 Author's calculations from Statistics Canada CANSIM Tables 379-0025 and 281-0042.

5 Industry Canada data does not provide by product detail beyond the top 25 export products thereby not enabling an assessment of total exports (beyond the top 25) as primary commodities. For this reason the composition of the top 25 products is in this paper used as indicative of the EU — Ontario trade.

6 Author's calculations based on Industry Canada Trade Data Online (http://www.ic.gc.ca/eic/site/tdo-dcd.nsf/eng/Home). Industry Canada trade data is derived from Statistics Canada surveys. The export data is based on the province of origin i.e. "where the goods are grown, extracted or manufactured" and imports data is based on "province of clearance," i.e. "province in which goods were cleared by Customs" Statistics Canada, "Province of Origin Questions; E-mail Correspondence.". The product imports data presented in this paper is likely understated, in that Statistics Canada import data only includes products cleared by Customs directly into Ontario. In practice a portion of the products actually imported into Ontario are cleared in, for example, Halifax and shipped onto Ontario, in which case they would not be included in the Statistics Canada and Industry Canada product import data used in this paper.

7 That the EU exports a broader range of exports is not surprising given the size of its overall economy and variety of regions and economies of which the EU is comprised. But this does pose challenges for Ontario's manufacturers both in terms of anticipating the flow of goods into Ontario that would accompany a FTA and in terms of the stiff competition that will face Ontario goods exporters seeking to find a market for their products in the EU.

8 Author's calculations based on Industry Canada, Trade Data Online, By Product (HS6 codes) http://www.ic.gc.ca/eic/site/tdo-dcd.nsf/eng/Home

9 Ontario is by far the country's largest gold miner, producing half of the gold mined in Canada (see Natural Resources Canada, Mineral Production, Annual Statistics: http://mmsd.mms.nrcan.gc.ca/stat-stat/prod-prod/ann-ann-eng.aspx). Ontario's gold exports to the EU are comprised of gold that is mined in Ontario and gold which is imported to Ontario from Canada's other gold producing provinces and from other gold producing countries in, for example, Latin American, and partially processed in the Ontario for export to the UK (see Natural Resources Canada, Canadian Minerals Yearbook: Gold; http://www.nrcan.gc.ca/minerals-metals/business-market/canadian-minerals-yearbook/2008-review/commodity-reviews/3732).

10 Source: UNCTADstat: http://unctadstat.unctad.org/ReportFolders/reportFolders.aspx

11 Author's calculations using Industry Canada Online Trade Data, By Product (HS4 codes): http://www.ic.gc.ca/eic/site/tdo-dcd.nsf/eng/Home

12 See for example '*Will we soon see the 'last hurrah' for gold?* Babad, M.

13 On the social and environmental costs of mining see, for example, Mining Watch, "MiningWatch | Changing Public Policy and Mining Practices to Ensure the Health of Individuals, Communities and Ecosystems.".

14 Stanford, *Out of Equilibrium: The Impact of EU-Canada Free Trade on the Real Economy*, 9.. Gold mines are especially capital intensive, so this ratio overstates the employment-generating effects of Ontario's gold-dependent mining sector.

15 Statistics Canada CANSIM Table 281-0042

16 Statistics Canada CANSIM Table 281-0028

17 Ferguson, "Premier Dalton McGuinty Seeks Stephen Harper's Help to Develop Ontario's Ring of Fire.". According to recent news reports the premier "is counting on mining exploration in the northern wilderness to lead to a new generation of prosperity for Ontario." Howlett and McCarthy, "McGuinty Calls on Ottawa to Help Him Open up the North.". Reliance on mining as a development strategy also raises questions in terms of social and environmental sustainability, see, for example, *What Kind of Environmental Assessment for Ontario's "Ring of Fire"?* Mining Watch.

18 The Mining Association of Canada, *Fact & Figures of the Canadian Mining Industry*, 36.

19 U.S. Geological Survey, *Mineral Commodity Summaries 2012*, 66.

20 Statists Canada, CANSIM Table 031-0002. Comparable data for Ontario is not available.

21 European Commission and the Government of Canada, *Assessing the Costs and Benefits of a Closer EU - Canada Economic Partnership*, 33.

22 Joint Study Ibid., vi, 31. favourably citing the findings of Richard A. Cameron and Konstantin Loukine, *Canada-European Union Trade and Investment Relations: The Impact of Tariff Elimination* (Ottawa: DFAIT, 2001).

23 *Joint Report on the EU-Canada Scoping Exercise*, 2.

24 Stanford, Out of Equilibrium: The Impact of EU-Canada Free Trade on the Real Economy, 6 (emphasis in original).

25 The economic record of NAFTA is mixed at best, with declines in employment, productivity and innovation, see for example Polaski, *The Employment Consequences of NAFTA*., Stanford, *Out of Equilibrium: The Impact of EU-Canada Free Trade on the Real Economy*, 32. Schwanen, *Free Trade and Canada - 15 Years Later*. and Trefler, "The Long and Short of the Canada-U.S. Free Trade Agreement.".

26 Stanford, *Out of Equilibrium: The Impact of EU-Canada Free Trade on the Real Economy*, 34.

27 These historical averages are based on an analysis of Canada's five long-standing FTAs, with the U.S., Mexico, Chile, Israel, and Costa Rica, as explained in Stanford (2010).

28 Stanford, *Out of Equilibrium: The Impact of EU-Canada Free Trade on the Real Economy*, 35. 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).

29 Scenario C indicates that the leather goods industry would be particularly hard hit resulting in the elimination of the sector and the associated employment.

30 Drummond, *Commission on the Reform of Ontario's Public Services (Drummond Report)*, ix.

31 The EU's trade strategy notes that "services are the cornerstone of the EU economy. They represent 77% of GDP and employment, an area of European comparative advantage with the greatest potential for growth in EU exports. The EU will need to negotiate to liberalise trade in services with key trading partners." European Commission, External Trade, *Global Europe: Competing in the World*, 8.

32 Beatty and Thumman, "Build a Bridge Across the Atlantic."

33 Grootendorst and Hollis, *The Canada-European Union Comprehensive Economic & Trade Agreement An Economic Impact Assessment of Proposed Pharmaceutical Intellectual Property Provisions*, 6.

34 Ibid., 9.

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

36 Patented Medicine Prices Review Board, "Annual Report 2010."

37 I wish to acknowledge Scott Sinclair for the overview of CETA and drug patent issues in the previous paragraphs.

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

39 Drummond, *Commission on the Reform of Ontario's Public Services (Drummond Report)*, 198.

40 Scoffield and Canadian Press, "Premiers Demand Compensation If Ottawa Concedes to EU Demands on Drug Patents - Brandon Sun."

41 Centre for Spatial Economics, *Budget 2012 and the Public Sector's Contribution to Ontario's Economy*, 14.

42 Grootendorst and Hollis also indicate that each $8 of additional premium cost, would result in $1 in additional spending by the drug companies on R&D. If companies decide to invest a portion of the additional revenue in Canada this could mitigate some of the economic costs to the province, but, as the authors note, there is no obligation to invest in R&D in Canada (Grootendorst and Hollis, 2011) . Furthermore, CETA specifically prohibits such off sets being attached to government procurement.

43 Howlett, "Liberal Budget Offloads Services in Ontario to Private Sector."

44 "RemunicalipationTracker - View Cases."

45 Sec. "FED 11" in *CETA - Services and Investment, Federal Government, First Offer, Annex II Reservations* (http://tradejustice.ca/pdfs/CETA_Serv_Inv_fed_annex2_reservations.pdf)

46 Sinclair, *Negotiating from Weakness: Canada-EU Trade Treaty Threatens Canadian Purchasing Policies and Public Services*, 14.

47 See Ontario reservation 47 (N47) "CETA - Services and Investment - Provincial and Territorial governments - First Offer - Annex 1 Reservations" "CETA - Services and Investment - Provincial and Territorial Governments - First Offer - Annex 1 Reservations." http://www.rqic.alternatives.ca/CETA_Serv_Inv_prov_annex1_reservations.pdf

48 Sinclair, "The Perils of CETA | CCPA."

49 Ibid. Canadian Press, "ExxonMobil, Murphy Oil Beat Canada In NAFTA Case."

50 Sinclair, "$130 Million NAFTA Payout Sets Troubling Precedent | Canadian Centre for Policy Alternatives."

51 Hepburn, "Canada Loses NAFTA Claim; Provincial R&D Obligations Imposed on US Oil Companies Held to Constitute Prohibited Performance Requirements - Investment Arbitration Reporter (IAReporter)."

52 McCarthy, "Oil Tycoon Takes on Ontario Green Energy Act over Wind Farm."

53 Sinclair, *Negotiating from Weakness: Canada-EU Trade Treaty Threatens Canadian Purchasing Policies and Public Services*, 17.

54 Anderson and Grusky, *Challenging Corporate Investor Rule: How the World Bank's Investment Court, Free Trade Agreements, and Bilateral Investment Treaties Have Unleashed a New Era of Corporate Power and What to Do About It*.

55 Following the Newfoundland and Labrador Abitibi Bowater settlement, Prime Minister Harper stated "I have indicated that in future, should provincial actions 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" Marotte and Ibbitson, "Provinces on Hook in Future Trade Disputes.".

56 Regarding New Brunswick see Shrybman and Sinclair, "Trade Treaty 'Chill': New Brunswick Abandons Public Auto Insurance in Face of Trade Treaty Threats | Canadian Centre for Policy Alternatives." and Ontario see Campbell, "Restructuring the Economy: Canada in the Free Trade Era," 92–93.

57 Beatty and Thumman, "Build a Bridge Across the Atlantic."

58 "Government procurement." WTO, "Government Procurement." and author's calculation based on Statistics Canada Table 384-0001, 2010 Ontario GDP data.

59 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."

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

61 "'Buy Brazil Act' and Super Real Are Here to Stay, Says Minister."

62 "Global Trade Alert | China: Accreditation of Suppliers of Certain High-tech Products."

63 According to the EU, "public procurement is an area of significant untapped potential for EU exporters. EU companies are world leaders in areas such as transport equipment, public works and utilities... This is probably the biggest trade sector remaining sheltered from multilateral disciplines." European Commission, External Trade, *Global Europe: Competing in the World*, 8.. According to reports "the EU made it clear from the beginning that negotiating access to sub-federal procurement in Canada is crucial to achieving a comprehensive deal" Gurzu, "IP, Rules of Origin, Investment Protection Still Block CETA Deal.".

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

65 Government of Ontario, "Green Energy Act Creates 20,000 Jobs."

66 European Commission, Directorate-General Trade, "Market Access Barrier hymn sheet: Canada- Ontario Green Energy Act 2009," November 10, 2009, p. 1, as cited in Sinclair, *Negotiating from Weakness: Canada-EU Trade Treaty Threatens Canadian Purchasing Policies and Public Services*, 11.

67 Ibid.

68 Government of Ontario, "Transit Vehicles Must Have Canadian Content."

69 Clean Air Partnership, *Local Food Procurement Actions and Reports Scan*, 16. & Friends of the Greenbelt Foundation, "Ontario's Local Food Champions 2012: Cultivating Change in the Broader Public Sector."

70 Corporation of the Town of Markham, *Markham's Greenprint Sustainability Plan*, 88.

71 "Toronto Local Food Procurement Policy Agenda Item History - 2011.GM5.13."

72 Government of Ontario Buy Local Food Act, 2010. "The Bill requires ministries of the Government of Ontario that spend more than $25,000 on food in a year to buy food that is local, local organic or local sustainable, except where the cost of doing so is more than 10 % higher than the cost of buying food that is not local, local organic or local sustainable. The Bill also requires that, beginning in 2012 and increasing in 2015 and again in 2020, ministries subject to the Act spend a certain minimum percentage of their total annual food expenditures on local and local organic or local sustainable food, regardless of the cost of doing so." http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2402

73 Roberts, "Toronto University Begins Dance with Local and Sustainable Food."

74 Canada - EU, "Canada-EU Comprehensive Economic and Trade Agreement: Draft Consolidated Text, as of January 13, 2010," 203.

75 Ibid., 208.

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

77 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)

78 Saunders, "Ontario Foot-dragging Imperils Canada-EU Trade Pact, Officials Say."

79 EU-Canada Comprehensive Economic and Trade Agreement, Government procurement, European Union's initial request to Canada, December 2009. Sections related to Ontario attached as Appendix 1.

80 See Appendix 1 (of this paper), Annex 2: Sub-Central Government Entities. The Annex presents the EU request for a threshold of SDR (Special Drawing Rights) 200,000, which converts to $310,820 (June 22, 2012: http://coinmill.com/SDR_calculator.html#SDR=200000).

81 Council of Canadians: http://www.canadians.org/trade/issues/EU/index.html Accessed June 2, 2012.

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