

**SUBMISSION REGARDING**

**Priorities of Canadian Stakeholders Having an Interest in Bilateral and  
Trilateral Trade in North America, Between Canada, United States and  
Mexico**

**to**

**the Standing Committee on International Trade**

**submitted by**

**TRADE JUSTICE PEI**

**c/o apt. 601, 188 Prince St.  
Charlottetown, PE  
C1A 4R9**

**October 3, 2017**

## **TRADE JUSTICE PEI MEMBERS**

**Atlantic Chapter of the Sierra Club**

**Cooper Institute**

**Canadian Union of Public Employees - PEI**

**Canadian Union of Postal Workers**

**Council of Canadians**

**Citizens' Alliance of Prince Edward Island**

**Don't Frack PEI**

**ECO- PEI**

**Guatemala – Maritimes Breaking the Silence Network - PEI**

**Latin American Mission Program**

**MacKillop Centre for Social Justice**

**National Farmers' Union – Region 1 – District 1**

**PEI Federation of Labour**

**PEI Food Security Network**

**PEI Health Coalition**

**PEI Nurses Union**

**PEI Public Transit Coalition**

**Save Our Seas and Shores - PEI**

**PEI Union of Public Sector Employees**

**United Food and Commercial Workers**

Trade Justice PEI is a coalition of 20 groups which has existed since the fall of 2013. We formed as a result of a shared concern about the federal government's trade agenda. Since that time we have met regularly and studied Canada's trade policy as it effects Prince Edward Island: its people, its farmers, its land and environment and the functioning of its democracy.

This submission will be divided into two parts, Part 1 and Part 2.

Part 1 will focus on what we believe the key elements of an alternative, truly fair and sustainable trade policy must be.

Part 2 will focus on areas in which the existing NAFTA text can be improved and areas in which the Canadian negotiators must not give up ground.

## **Part 1**

### **There are many possible Frameworks for Trade**

---

- The Government of Canada, when it talks about “trade agreements”, refers to one very specific framework for trade - the model used for the “free trade” agreements of the past thirty years.
- This model is based on the principle that free access to markets with no strings attached and amplified investors' rights, are the pinnacle achievement of trade rules.
- In principle this model deters regulation or interference in the market for the public good eg. policies to ensure fair distribution of wealth, policies which protect PEI's land base or environmental protection polices
- In this model market access rules, the procurement rules and the intellectual property provisions entrench investor rights which are enforceable through powerful dispute settlement processes.
- There are many different possible frameworks for trade which Canadians could be discussing.

For the purposes of this submission we will call the framework employed for all of Canada's agreements over the past 30 years the “investor rights” framework.

### **PEI's Loss of Policy Space due to Investor Rights Agreements**

---

When we came together 4 years ago Trade Justice PEI has examined key aspects of modern-day trade agreements such as intellectual property rights, regulatory cooperation, procurement rules, the aggressive market access rules, the investor/state dispute resolution provisions and the prohibition of off-sets.

We were troubled by the ways in which these aspects of the template were inconsistent with many social policy options which Islanders were wanting to pursue or could very well want to pursue in the future. We considered areas such as inter-city public transit, sustainable agricultural (a huge issue on PEI), local economic development and the strength of our rural communities, health care and affordability of drugs, wind-energy development, value-added sea-food processing, protection of our fragile estuarine and coastal eco-systems, bold climate change mitigation policies which benefit local businesses and the continued creation of publically-owned assets and well-paid public sector jobs.

## Growing Inequality

---

Over the past few years there have been both computer models and empirical studies which demonstrate that investor rights agreements are not a tool for shared prosperity and instead contribute to increasing inequality. These include:

- Computer Generated Equilibrium studies on both the CETA and the TPP which used the sophisticated United Nations Global Policy Model (GPM) predicting that unemployment and increased inequality would result from both agreements.<sup>1</sup>
- Empirical studies cited by Dani Rodrick, Professor of International Political Economy at Harvard's University's John F. Kennedy School of Government.<sup>2</sup>
- IMF's most recent Global Economic Outlook attributing increasing inequality since 2000 in both developed and developing countries to global trade patterns and the decline of unions along with technological change.

Prime Minister Trudeau has admitted that "Trade hasn't been great for everyone...Sometimes it has benefitted only the top tier of any economy".<sup>3</sup>

---

<sup>1</sup> TUFTS University's study "Trading Down: Unemployment, Inequality and other risks of the Trans-Pacific Partnership Agreement. JeronimCapaldo and Alex Izurieta, with JomoKwame Sundaram. "CETA without Blinders" Pierre Kohler and Servaas Storm of the Global Development and Environment Institute at Tufts University

<sup>2</sup> "The trouble is that the real world has not lined up so neatly with trade economists' assumptions. Critics of trade agreements have marshaled countless anecdotes about the adverse effects of imports on wages and employment in affected communities. Recent empirical [work](#) by three academic economists – David Autor (MIT), David Dorn (University of Zurich), and Gordon Hanson (UC-San Diego) – shows that the critics have a point (and then some)."

<sup>3</sup> If we look at the potential impacts of recent agreements on the Island economy – the challenges to the dairy sector and the rural economies it supports, the increase in drug costs, the inability to create robust policy around the processing of seafood and fish, the inability to implement the most effective "local food" policies and the restrictions on local government and MASH sector procurement – we can see the dynamics which take money out of the local economy and hand it to the elite and larger players in global markets.

Given the impact of investor rights agreements on inequality and the layers of policy restrictions which they have imposed on all levels of government, we ask “**Why is the Government of Canada constantly looking to negotiate yet another agreement using this framework?**”

It is the position of Trade Justice PEI that Canada needs to develop a new framework for negotiating trading relations.

We do not believe that the single-minded pursuit of ever more exports at any price through investor rights agreements constitutes a thoughtful or appropriate policy for economic prosperity in either Prince Edward Island or Canada.

Furthermore, at a time of low global economic growth, when average tariffs are low, there are diminishing returns from trade liberalization.

## Next Steps

---

It is time to

- Take a pause and stop negotiating investor rights agreements

Thomas Piketty, famous French economist, Guardian UK, November 16, 2016: “**....liberalizing trade should no longer be the main focus. Trade must once again become a means in the service of higher ends. It never should have become anything other than that.**”

- Reflect on new organizational principles for Canada’s trade based on up-to-date public policy goals, fair sharing of the benefits of trade, the urgent need to address climate change and sustainable development including agriculture. It is not enough to tinker around with the current framework by tweaking side chapters, making amendments and upgrades. It is the framework and the core values guiding it which are inappropriate in today’s world.
- Consider new economic policies outside of the neo-liberal trade deal trajectory which are more closely aligned with the needs of the global community, will create good jobs in Canada and put us on the path to sustainability. Examples might be:

- ❖ A large public investment in a full-scale transition to a carbon-free economy which would garner public support by ensuring that Canadian communities and their economies benefit in terms of economic activity and jobs
- ❖ Policies of managed trade and more active Canadian industrial policies which will create more value-added manufacturing jobs and help the Canadian economy maintain well-paid jobs.

## The Need for a Discussion about what Kind of Trade Canada will do and what Public Policy Goals we want our Trade to support.

---

We need a provincial and national discussion about how we build a just and sustainable trading system. On what core values should it be built? Trade Justice PEI, after months of discussion and workshops, has come up with the following six possible organizational principles for future trade.

### **DEMOCRACY**

Communities and local governments have full rights to pursue policies in the public interest, including bringing services and production into the public domain.

### **ENVIRONMENTAL SUSTAINABILITY AND TRANSITIONING TO A CARBON NEUTRAL ECONOMY**

Trade rules ensure that trade supports environmental sustainability by favouring products which are manufactured, grown or raised sustainably.

### **REDUCING INEQUALITY**

The benefits of trade are shared fairly. Workers receive a fair share of the benefits and measures to ensure this take precedence over trade liberalization.

### **WORKERS' RIGHTS AND HUMAN RIGHTS**

Trade rules support an overarching international, cooperatively designed regime of workers' rights which includes strong enforcement mechanisms and strict penalties.

### **ECONOMIC RESILIENCY**

Food sovereignty and sustainable models of agriculture are supported by trade rules. Diversity in the economy is valued.

## FIRST NATIONS AND INDIGENOUS PEOPLES' RIGHTS

The right to prior informed consent pursuant to the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization Convention 169 be respected.

## Part 2

Within our broad belief that the template of NAFTA and pursuant agreements is inconsistent with fairness and economic and environmental sustainability we submit the following:

### Supply Management

---

Supply management has meant Canadian and Island dairy farmers are assured their costs of production and that they can operate without subsidization. It is built upon three pillars: import controls, prices based on the costs of production and matching supply to demand. Supply managed dairy farms are part of the backbone of Prince Edward Island's rural communities. Unlike more export-oriented sectors, dairy farms use far fewer pesticides, restore organic matter and nutrients to our agricultural soils, and operate at a smaller scale than their industrial counterparts. They perform a valuable ecological role in the countryside. Supply management is also good for consumers, who have access to adequate quantities of healthy food, and for the environment as the need for long-distance transport is reduced.

President Trump has been outspoken in his desire to topple Canada's supply management system, calling it a "disgrace" and unfairly blaming it for low milk prices that are driving American dairy producers out of business. However, even American farmers have called this a distraction, pointing to the real cause of their problems – oversupply and prices that don't match their costs of production.

Canadian negotiators must defend supply management, and the ability of Canadian dairy farmers to make a decent living. This is an issue of food sovereignty.

### Social policy "chapters" do not make trade policy fair – but they can be useful "spin"

---

As previously mentioned when we came together 3 years ago Trade Justice PEI has examined key aspects of modern-day trade agreements such as intellectual property rights, regulatory cooperation, procurement rules, the aggressive market access rules, the investor/state dispute resolution provisions and the prohibition of off-sets. We explored the many ways in which they restrict flexibility in social policy.

As a result we do not believe that side chapters existing within the restrictions of the existing trade agreement template have the potential to make meaningful change in social and environmental policy as long as the core investor rights provisions mentioned above remain. We feel that a much bolder approach to the relationship between trade and social policy is essential.

**Policies to combat climate change, promote sustainable development and agriculture, respect indigenous rights and promote workers' rights need to be established in overarching cooperatively developed agreements and trade policy and trade rules must be subservient to these overarching policy regimes - not the other way around which is to-day's status quo.**

Will policies promoting gender equality “in trade” simply ensure that businesses install a woman among their senior staff? This will not change the trade regime at all. It will be business as usual with all the same restrictions on bold public policy still in place. A program which put obligations on investors to hire local women in untraditional occupations would be far more beneficial to women of Prince Edward Island. Protecting the ability of the Canadian government to implement a national pharmacare program would also be far more important.

A labour chapter which grants workers and workers organizations enforceable rights to challenge investors that move their production to seek out weaker environmental and labour laws, or violate workplace standards and the right to organize a union, should be pursued. However, decision makers must have the right to impose significant fines and penalties (especially with regards to the right to trade).

## Remove investor-state dispute settlement (ISDS) provisions from NAFTA

---

We are concerned about lack of balance in the structure of the ISDS tribunals. The tribunals rule only on the rights of investors to make profits but not on the obligations of investors to operate within the demands of broadly supported public interest policy. The public interest is not served by such narrow decision making.

In Prince Edward Island policies aimed at protecting our water supply, policies protecting our coastal and environmentally sensitive areas, moratoriums on fracking or drilling for oil in Island waters could all be targets for challenges from foreign investors.

In addition, attempts to receive benefits for Islanders from investors using our resources (i.e. requiring off-sets in return for investment in wind energy) could be challenged.

As Maritimers we are familiar with three Atlantic Canadian cases under NAFTA which demonstrate the chilling impact of investor-state provisions.



In 2004 the people of New Brunswick elected a government on the basis of its promise to implement public auto insurance. Plans to implement the policy ended after the threat of an ISDS challenge under NAFTA.

When a US company called Bilcon sued Canada for \$300 million because it didn't like a decision of a joint federal-Nova Scotian environmental assessment panel which recommended against a massive extension of a quarry in Digby, Nova Scotia, it won. In this case the panel member, chosen by Canada, explicitly stated in his dissenting decision that the ruling would have a chilling effect on rulings of Canadian environmental assessment panels.

When Exxon-Mobil sued against Newfoundland's condition that the oil company spend a certain amount of Research and Development dollars in the province in return for drilling rights the ISDS tribunal ruled that not only did Newfoundland have to pay the company an award of \$17.3 million but that as long as the Research and Development guidelines were in place Newfoundland was in continuing breach and damages would continue to accumulate. This is tantamount to an "order to remove" the policy.

## Health care and drug costs

---

NAFTA's central objective is trade liberalization through the reduction of trade barriers. Public policies that ensure public control of a service as well as policies that seek to regulate services in the public interest can be seen as barriers to trade. This is further complicated because, in Canada, the delivery side of the healthcare system makes it difficult to draw a sharp line between what is public and what is private while the trade agreements require a clear demarcation between the two modes of service.

The loss of sovereignty associated with investor rights in the current trade framework can leave jurisdictions with reduced ability to design effective population health strategies. Companies may be able to prevent public health policies, such as restrictions on advertising of alcohol or smoking, that would affect their sales.

The general reservation in *NAFTA Annex 2C9* provides some protection for healthcare services. It is a limited and qualified reservation that only shields a health service to the extent that it is a social service established or maintained for a public purpose. This reservation must be strengthened, to allow for the creation of new public services, such as pharmacare.

### ***Protect Islanders from further increases in drug costs***

Canada must not give in to pressure to align our drug patenting system with the excessive drug patenting of the United States. This would delay the arrival of cheaper generic drugs, causing prices to rise. Increased drug costs will inevitably be passed on to seniors and people suffering from chronic illness. It will seriously affect the ability of Canadians to afford quality health care.

Canadians began paying 15% to 20% more for new, patented drugs under the Mulroney government in exchange for a promise of innovation and jobs. The higher prices in Canada for the new brand name drugs are costing us, at least, an additional \$2 billion a year. Canadians get nothing in return for these major concessions. We now invest twice the amount in the form of various subsidies to the brand-name drug industry than we receive in benefits.

## Climate Change

---

We support the removal of the energy proportionality rule, which as it stands, is an obstacle to Canada's transition to alternative energy sources and impedes our ability to meet our climate change commitments.

It is also essential, given the huge task of effectively dealing with climate change, that local communities benefit from good climate policies. Trade rules must be changed in order that government's can pursue policies which ensure that there are local benefits from alternative energy projects and other policies which reduce the community's carbon emissions. Without buy-in from communities across Canada we will not succeed. This is very evident on PEI where communities quite reasonably demand that wind energy must be accompanied by economic benefits and "local purchasing" policies if they are expected to support the projects.

NAFTA's procurement rules must allow governments to use "green purchasing" requirements and also ensure that local sourcing requirements are allowed.

**Policy flexibility is a key component of democracy and developing a sustainable environment. Sustainable development is a dynamic process. If we are to successfully meet the challenge of climate change, there must be the ability to adapt and change.**