



# The CETA Deception 2.0

**How the Trudeau government is misrepresenting CETA**

## Background

In Canada, the Canada–European Union Comprehensive Economic and Trade Agreement (CETA) passed its second reading in the House of Commons in December. However, the negotiation and approval process for the controversial agreement has not been smooth. While Canada and Europe produced a Joint Interpretive Declaration (later tweaked and called the [Joint Interpretive Instrument](#)) to save CETA in October 2016, [legal experts have noted](#) that the instrument does not change the text of CETA, is not enforceable, and is not likely to be taken seriously as evidence in an investor-state arbitration court. Rather, this “[political statement](#)” was designed to alleviate European concerns about CETA.

Around the same time, the Canadian government released a document about CETA called “[Myths and Realities](#)” in an effort to address public concerns. The European Parliament has a [similar document](#).

This wasn’t the first time the Canadian government was trying to sell the public on the “myths” of CETA. Five years ago, the Harper government also tried to explain to Canadians what it hoped to achieve through its free trade negotiations with the European Union. In 2012, former prime minister Stephen Harper dispatched 18 of his ministers to press conferences across the country, enlisted marketing support from several big business lobby groups, and created a new webpage to try to “demystify” the Canada-European Union Comprehensive Economic and Trade Agreement (CETA).

The Council of Canadians debunked the government’s statements in the 2012 report, entitled ‘[The CETA Deception - How the Harper government’s public relations campaign misrepresents the Canada-European Union Comprehensive Economic and Trade Agreement](#).’

Following Stephen Harper’s strategy, the Trudeau government is now giving its own spin on CETA. It is important to examine these “[Myths and Realities](#)” and debunk their inaccuracies in order to fully understand CETA’s implications on the right to regulate, the protection of public services and policies that affect nearly all areas of life, including food safety and health care.

The Joint Interpretive Instrument, as well as government rhetoric on both sides of the Atlantic, are deeply misleading. While several progressive organizations and legal experts have provided [insightful analyses](#) and debunked myths in the Joint Interpretive Instrument, we must also explicitly address Canada’s own set of myths, which we will continue to see repeated in Parliament as CETA is debated.

This document will help you better understand and refute what the Canadian government is saying about CETA in order to push it through Parliament. Each of the 10 statements below was taken directly from the Canadian government’s “Myths and Realities” document.

## Myth or Reality: You decide

### MYTH or REALITY: FTAs threaten Canada's public services.

#### THE FACTS

- CETA commits countries to open up their public services to private companies. While CETA will not force governments to privatize their public services, a driving principle of the agreement is to liberalize services. This means reducing barriers for corporations and opening the door to privatization.
- Many EU countries and Canadian provinces have already committed to liberalizing public services. For example, 11 European countries have opened up long-term residential care for the elderly to the private sector. Several Canadian provinces have opened up automotive insurance to private involvement as well, which means that other provinces that wish to pursue public auto insurance would be in [violation of CETA's market access provisions](#).
- There are some exemptions for sector liberalization in important areas that are listed in Annex I and II. However, those sectors that are not listed – such as wastewater services or garbage collection (in the case of Canada) or the telecom sector (in the case of Europe) – will not be protected and [can never be exempted](#) as long as CETA exists.
- Once a country has let in a private operator governments can no longer make the service public, or create new public services, without the potential for a costly dispute. This is because none of the exemptions pertaining to public services protect states from the investor-state dispute settlement (ISDS) mechanism. Although not new, ISDS is the most controversial element of CETA because it gives investors the right to sue a national government over anything that would affect their profits or *potential* profits. If a previously privatized service was to be made public – as has been the case across Europe after [failed privatization projects](#) – the government could be liable to compensate investors in an ISDS case. For example, as Scott Sinclair, senior trade researcher at the Canadian Centre for Policy Alternatives [points out](#), making previously private services public would be an explicit violation of the agreement's market access obligations. While in theory parties could re-nationalize or re-municipalize public services, this is very difficult and could come at a very high cost.

### MYTH or REALITY: FTAs prevent governments from regulating labour, health care and safety standards.

#### THE FACTS

- As other experts have [clarified](#), the right to regulate in the interests of labour, health care or safety can only occur in accordance with CETA provisions. And, if challenged by a foreign investor in court, the decision about the right to regulate is left to a panel of lawyers. Even if successful, the right to regulate can come with a high price tag in the form of compensation paid to the investor as well as millions of dollars of cost in legal fees.
- Many legitimate public interest regulations are challenged before they are even brought before an investor-state court. This is because the mere threat of arbitration is enough to kill or substantially roll back a policy – a dangerous effect known as 'regulatory chill.' Regulatory chill is a phenomenon [acknowledged by lawyers](#) and explored in academic literature. A recent [paper](#) by Gus Van Harten and Nadine Scott that draws on evidence from more than 50 interviews finds that Canadian policymakers have experienced regulatory chill and that the threat of arbitration has changed policy decisions.

- Aside from the ISDS mechanism, there are important constraints on domestic regulations within CETA. For example, licensing and qualification requirements (as well as any measure *relating* to these regulations) must be “as simple as possible” and must not “unduly complicate or delay the supply of a service or the pursuit of any other economic activity” (Article 12.3). This would apply to diverse entities such as [nuclear facilities, banks, and food processing plants](#).
- CETA’s chapter on Regulatory Cooperation has the power to influence future legislation. Under [CETA](#), governments can request copies of proposed legislation and are encouraged to consult with other governments “as early as possible” in the policy-making process “so that comments and proposals for amendments may be taken into account.” This means that another government could influence regulation [before it has been seen](#) by the domestic government. While cooperation is voluntary, if states do not engage in cooperation, they are required to provide a justification.
- Commitments on regulatory cooperation also include the elimination of “unnecessary regulatory differences” (although it is unclear what constitutes such a difference). There are major differences in the European and Canadian regulatory processes and this has caused conflict in the past. For example, Canada has disputed Europe’s chemical regulations [21 times](#) at the World Trade Organization (WTO) between 2003 and 2011. These regulations are part of the EU’s chemical registration program called REACH. The [program’s goals](#) include protecting human health and the environment from the use of chemicals and abiding by the precautionary principle.

## MYTH or REALITY: FTAs threaten Canada’s public health care system.

### THE FACTS

- The same concerns apply as those mentioned in Myth 1 about the threats to public services. While Canada has made an important exemption on health care, this does not mean that CETA will not affect health care. CETA will increase drug costs by an estimated [\\$850 million annually](#) in Canada because the agreement will extend patent terms for brand name drugs and provide a right of appeal in disputes, which could delay the introduction of more affordable, generic drugs. The increase in drug costs will fall on consumers, but will also [burden](#) provincial health care systems.

## MYTH or REALITY: FTAs threaten Canada’s water quality standards and water-services regulations.

### THE FACTS

- Although some water services are protected from market access and national treatment commitments (like the collection, purification and distribution of water), this is not a complete exclusion and it is not as comprehensive as the European protections. And while some water services are protected from procurement obligations, some are not, such as sanitation services. This will invite companies to put a “[foot in the door to establish and expand the private delivery or treatment of water](#).”
- Importantly, water services are subject to enforcement through the investor-state dispute settlement system. So while the Canadian government – including its municipalities – is free to engage in the privatization of public water systems, these systems will be difficult to re-municipalize. Given negative experiences with privatization in Canada, cases where water would be re-municipalized (for example, in [Hamilton, Ontario, and Halifax, Nova Scotia](#)) could have been subject to an ISDS dispute.

## MYTH or REALITY: FTAs harm Canadian environmental standards and regulations.

### THE FACTS

- The same concerns apply as those mentioned in Myth 2 about the right to regulate labour, health care and safety standards.
- CETA's environment chapter does not have an enforcement mechanism. This is compared to the investor-state dispute mechanism that provides substantial rights for investors and has been used in the past to challenge environmental regulations (read more about this in Myth 8).
- The negative list approach to services means that anything not explicitly listed cannot be protected from liberalization. Wastewater treatment was not listed so it is open to privatization. This means that cash-strapped municipalities will have to compete for contracts with European firms.

## MYTH or REALITY: FTAs could force Canada to export its water.

### THE FACTS

- Although it is true that CETA cannot “force” Canada to export its water, there are important implications for water in the deal. Once water leaves its “natural state” (i.e. water in natural bodies like rivers or lakes), it is subject to treatment like any other commercial good in CETA. Water would then be subject to all of the expansive protections that companies and investors are afforded like minimum standard of treatment and market access. For example, investors can take water out of its natural state to export it by bottling it and any efforts to place limitations on the amount of water exported could be challenged under the investor-state dispute provision.

## MYTH or REALITY: FTAs will allow foreign investors and foreign companies to challenge Canadian laws and regulations.

### THE FACTS

- While the ISDS mechanism might in theory allow governments to uphold legislation in the public interest, in reality, there have been a number of cases where this hasn't happened. In one ISDS [case](#) against Canada under NAFTA, the government reversed a ban on the movement of toxic waste. Arbitration claims have been brought against Canada to challenge policies and practices around pesticides (see cases [here](#) and [here](#)), a ban on a suspected neurotoxin [MMT](#), the results of an [environmental impact statement](#), and in a case that is currently underway, a ban on [natural gas fracking](#). More fundamentally, whether a policy is deemed legitimate or not is decided by a panel of for-profit arbitrators.
- Even if governments do win and successfully defend legislation it is very costly. There is [no cap](#) on amount of compensation that can be paid. The average cost of defending against an arbitration claim is [\\$8 million USD](#) and the average compensation claimed by investors is [\\$343 million USD](#).

## MYTH or REALITY: CETA will prevent Canada's municipal governments from sourcing goods and services locally.

### THE FACTS

- Canada has allowed virtually unconditional access to procurement markets. For the first time in an international trade agreement Canada has opened up municipal and provincial governments to compete with foreign firms for procurement contracts.
- CETA prohibits public institutions from giving purchasing preference to goods or services from local entities if the contract exceeds approximately \$315,500. What does this mean? One area of concern is the procurement of local food by municipalities, academic institutions, school boards, and hospitals. While smaller procurement initiatives such as staff cafeterias (i.e., vending machines in public spaces and child care services) may have contracts under the \$315,500 threshold, local food preferences in larger contracts, which represent the vast majority of contracts, would be vulnerable to trade disputes from food suppliers. As [research elsewhere](#) has shown the impacts will be felt most by hospitals, and university and college campuses, which currently spend 3.5 to four times as much as the CETA threshold stipulates.
- CETA will also prohibit preference for local vendors in utility contracts that exceed approximately \$657,000 and construction contracts above \$8.2 million. There is no guarantee that the foreign firms would hire locally.

## MYTH or REALITY: The government of Canada negotiated the CETA FTA agreement secretly.

### THE FACTS

- In 2008, the federal government ran an ad in the *Canada Gazette* soliciting input on CETA. The timeline for the input was [very short](#) – only 30 days – and provided civil society groups little notice or information on the proposed deal.
- The CETA negotiations were launched in May 2009. Briefings were provided after each negotiation round to civil society and business groups. However, these were not active consultations. The government did not consider feedback from civil society groups and government officials did not take formal notes at these sessions.
- While the Canadian government [states](#) that “officials have held hundreds of meetings with stakeholders to consult on all aspects of the (CETA) negotiation,” it is unclear with whom these meetings were held. The public and civil society groups have not been consulted.
- CETA was first signed in September 2014 and this was the first time the text of the agreement was released to the public. This means that – by definition – the text was negotiated in secret. Once the agreement was signed no text changes were possible.
- Of particular concern is the lack of consultation with Indigenous peoples. While the agreement presents a threat to indigenous rights through the ISDS mechanism, it is not clear how – or if – the government consulted with Indigenous peoples. While the government has a [duty](#) to consult with Indigenous peoples in federal environmental assessments, there is no mention of them in CETA's [environmental assessment](#). The Harper government also did not consult with Indigenous peoples in [similar agreements](#), such as the Canada-China Foreign Investment Promotion and Protection Agreement.

## MYTH or REALITY: CETA will prevent the government of Canada from protecting Canada's cultural interests.

### THE FACTS

- While CETA includes a cultural exception, this only applies to particular chapters in the text and **does not** cover key provisions like market access and national treatment. While the Quebec government took out a broader exception in order to protect its cultural interests, other provinces or territories did not take these same precautions.

## Conclusion

CETA threatens the right to regulate in the public interest and the ability of governments to maintain control over vital natural resources and public services. CETA gives foreign investors extraordinary rights and powers – and for what gain? CETA's promised economic benefits remain elusive. A [recent study](#) has shown that CETA will result in job losses, net losses in government revenue, and increased inequality in both Canada and the EU.

The Canadian process to ratify CETA has been undemocratic. The Trudeau government tabled Bill C-30 to implement CETA the day after it was signed, which violated [parliamentary procedure](#) that requires 21 days notice for new legislation. Moreover, the committee process has been [described](#) as having “unreasonably short deliberations,” and only considers written submissions from the witness list.

The debate about CETA is far from over. The EU's 38 member states and regions must still ratify the agreement. Four regional governments in Belgium are set to refuse ratifying CETA unless their concerns about ISDS are addressed. And the investor-state dispute settlement – one of the most controversial elements of the agreement – will not be applied in the provisional agreement. While these developments are promising, they do not go far enough to protect people and the planet from the harm CETA will impose.

If ratified, CETA will unfairly restrict how local governments source and procure goods and services, add hundreds of millions of dollars to the price of pharmaceutical drugs in our public health care system, create pressure to increase privatization of local water systems, transit and energy, and give corporations the power to sue governments over policies and regulations that affect their profits. The secretive negotiating process and an agreement that benefits corporations more than citizens is an affront to democracy on both sides of the Atlantic.

Citizens in Canada and Europe have one clear option: reject CETA before it is ratified.



