

The Unhealthy Side Effects of CETA



The Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada



The EU recently concluded a new free trade deal with Canada – the **Comprehensive Economic and Trade Agreement**, or **CETA** for short.

The deal has considerable side effects for people and public policy making.

It has the potential to undermine public health by:

opening the door for businesses to challenge public health laws

limiting policy choices for Services of General Interest
(social, healthcare, education, water)

promoting tobacco, alcohol and unhealthy food

ignoring antimicrobial resistance

This booklet summarises how.

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1 | Undermining public health policy by arbitration (Investment Court System - ICS)

Under CETA, foreign investors will be able to claim compensation if a government introduces public policy measures which frustrate their investment expectations. This includes health protection measures, as well as consumer rights, employee protections, safety standards and environmental rules.

Investment protection provisions have already been systematically exploited by companies acting against the public health interest

– for example, the numerous cases brought by tobacco companies with the intention of preventing, delaying or blocking public health legislation.¹²³

Lifesaving measures which can be affected by this clause include, among other initiatives, plain packaging of tobacco, minimum unit pricing of alcohol, food labelling, air pollution restrictions, legislation on chemical safety and rules on toxic materials in toys.

2 | Creating legal uncertainty on the compatibility of ICS with EU law

The agreement includes a proposal for an Investment Court System (ICS) intended to replace the old Investor-to-State Dispute Settlement (ISDS) system. The ICS proposal in CETA is insufficient to address public health concerns, as it represents only a partial reform and still contains fundamental flaws. A parallel investor court system is not necessary between the EU and Canada, as both are trading blocs with stable democracies, mature established Court systems and legislature.⁴

There is no evidence that including investment protection measures in trade deals leads to increased foreign investment.

EU law and settled case-law of the Court of Justice of the European Union (CJEU) suggest that ICS in CETA may be incompatible with EU law because it would undermine the autonomy of the EU legal order and the powers of the EU courts in particular, and negatively affect the completion of the internal market. A legal briefing by ClientEarth sets out a short analysis of the legality under EU law of ICS in CETA and briefly outlines how the European Parliament should verify the legal concerns with the Court of Justice of the European Union.⁵

¹ Eli Lilly v Canada where the pharmaceutical company Eli Lilly is demanding \$100 million in compensation after Canadian authorities determined that Eli Lilly had presented insufficient evidence (a single study involving 22 patients) when filing for the patent to show that the presented medicine would deliver the long-term benefits promised by the company. <http://www.italaw.com/cases/1625>

² Ethyl v Canada which concerned a claim against an environmental law by the Canadian government for health reasons <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/ethyl.aspx?lang=eng>

³ Chemtura Corp. v. Canada - (NAFTA tribunal Aug 2, 2010). <http://www.thecourt.ca/2010/09/08/chemtura-v-canada-the-federal-government-successfully-defends-nafta-claim-resulting-from-pesticide-ban/>

⁴ 'Joint Analysis of CETA's Investment Court System (ICS) prioritising Private Investment over Public Interest' and 'Annex1: Legal analysis of CETA's Investment Court System(ICS)' available at <http://epha.org/do-revised-investment-protection-rules-in-the-eu-canada-trade-deal-make-any-difference/>

⁵ ClientEarth Legal briefing EP Legal Service Opinion on ICS in CETA, 5 September 2016, <http://www.documents.clientearth.org/wp-content/uploads/library/2016-09-05-legal-briefing-ep-legal-service-opinion-on-ics-in-ceta-ce-en.pdf>

CETA encourages health harmful companies to try to stop governments regulating to protect public health



Canada is the most sued nation in the North American Free Trade Agreement (NAFTA) which includes an Investor-to-State Dispute Settlement (ISDS) clause.

Canada has been sued 35 times in total (compared to Mexico with 22 and the U.S. with 20 cases), which accounts for 45% of investment arbitration. In those 35 cases, Canada has lost or settled 6 claims, and has paid over \$170 million in damages. In addition, for the 29 cases that Canada won or did not settle, it is estimated that Canada has spent \$65 million on legal defence.

Many of the legal challenges that Canada has faced under NAFTA have included investors' objections to domestic legislation introduced by the Canadian government to enhance environmental protection. For example, in the Ethyl Corp (1997) case, the US challenged a Canadian ban on import and export of a gasoline additive and suspected neurotoxin. Canada chose to settle the case, offered \$13 million in damages and consequently repealed the ban.

This shows how ISDS has weakened environmental and health protections and how it can dissuade governments from protecting the public interest and lead to 'regulatory chill'.

The ICS mechanism proposed for CETA invites such cases and is expected to have a similarly chilling outcome.



“I am concerned that the ‘interpretative declaration’ attached to CETA has at best minimal legal force, quite similar to the confusing value that preambles have previously been given in international treaties. I am afraid arbitrators would presumably view it not as binding, but that it would only inform their interpretations. If the concerns in the declaration were shared by both the EU and Canada, I am wondering why they aren’t included in the main text.”

Nicolette Buttler, Lecturer of Law, University of Manchester



3 | Encouraging foreign companies to challenge, undermine, block or delay public health laws and standards

Investor-to-State Dispute Settlement (ISDS) can and has led to regulatory chill and weaker environmental and health protections in the past. The ICS mechanism proposed in CETA is likely to inspire more such cases and outcomes.

The proposed wording of the substantive investment protection standards is very vague including, notably, on indirect expropriation and the incredibly broad 'fair and equitable treatment'. Therefore, investment protection measures could potentially be used to challenge government decisions concerning reversal of liberalisation of services for the public interest relevant for health, as the following section explains.

4 | Limiting the freedom of governments to organise public services

CETA limits the freedom of governments to make policy decisions on the organisation of Services of General Interests relevant for health, such as social services, healthcare, education and water. These limitations are caused by incentives for further liberalisation, which create financially significant barriers to reversing such a decision.

CETA is the first EU agreement with a 'negative list' approach for services.

This means that all services will be subject to market liberalisation unless an explicit exception is made. CETA contains a controversial 'ratchet clause' which limits the reservations made by the Parties, as it applies CETA's provisions - including the Investment Court System (ICS) rules - to all measures which go against liberalisation.

This could be considered as a limitation of the policy space of governments as only further liberalisation will not be restricted by CETA. Consequently, the claim that governments can bring back services which were privatised without any limitation is unfounded.



CETA could put further constraints on the right to regulate public Services in the General Interest



The EU treaties recognise the special role of Services of General Economic Interests (SGEI), including healthcare, education, social services and water supply services providing access to water and sanitation.

Whereas CETA sets out to make reservations for SGEI, the applicability of these reservations depends in part on how those services are funded. This approach can have serious limitations.⁶ According to CETA, if a national government decides to liberalise or privatise public services at any time, those services would then be subject to the trade agreement's regulatory provisions.

These findings run contrary to the declaratory statements in the CETA Interpretative Declaration that "CETA does not prevent governments from regulating the provisions of these services in the public interest" as commitments made now could have binding effect on future governments. While CETA does not and cannot oblige countries to privatize public services, it does aim to progressively promote liberalisation – i.e. competition between service providers, be it public or private operators, in virtually all services, including in public services.

An independent social impact assessment is needed about the possible impact of CETA on affordability, quality and equal treatment in access concerning SGEI.

⁶ See for example Krajewski M, Kynast B. Impact of the Transatlantic Trade and Investment Partnership (TTIP) on the Legal Framework for Public Services in Europe. 2014. Hans-Böckler-Stiftung, pp 27-28 on "Restriction to 'privately funded' services"



"We find it very problematic that CETA has the potential to limit the policy space of governments by promoting liberalisation, utilizing negative lists and applying the Investor Court System investment protection provisions. Whereas the CETA Interpretative Declaration offers some reassurance, it does not provide adequate protection to regulators in light of the potential risks."

*Priit Tohver, Regional Director for Europe,
International Federation of Medical Students' Association (IFMSA)*

CETA could increase our exposure to cancer-causing chemicals



**Center for International
Environmental Law**



CETA would provide new avenues for Canadian companies and the Canadian government to take the EU and Member States to court for implementing laws that regulate dangerous substances in our food, children's toys, and cosmetics.

CETA would introduce new and potentially massive financial risks for states that enact or apply laws to protect the public from toxic exposure. These risks alone could further undermine our ability to regulate harmful chemicals and to limit their impacts such as cancer, birth defects, asthma, and neurodevelopmental disorders.

For example, EU's REACH law, which explicitly refers to the precautionary principle, requires companies to generate information about the safety of a chemical before it is marketed. Industry and the Canadian government consider compliance with this system to be an undue expense and a barrier to trade.

Canada has raised concerns over 20 times to the EU's ambitious chemical law REACH at the World Trade Organisation's Technical Barriers to Trade Committee. Also, in March this year, Canada warned that if the EU took a precautionary approach to regulating hormone-disrupting chemicals, this "could unnecessarily disrupt trade."

“By removing so-called regulatory trade barriers, CETA externalizes the costs of chemical companies onto citizens”

says Layla Hughes, Senior Attorney at the Center for International Environmental Law (CIEL).



The cost of hormone disrupting chemicals alone is estimated to be around €157 billion each year, while current annual regulatory costs to chemical producers is less than €10 billion per year (or 2% of their turnover).

“Finding alternatives to dangerous substances would actually bring savings”

says Genon Jensen, Executive Director of the Health and Environment Alliance (HEAL).





5 | Putting profit first in privately funded Services for General Interest

Reservations in CETA only apply fully if those social, health, education and water services are publicly funded.

That would have implications for specific healthcare service providers such as the Belgian mutualités (mutual health insurance providers) which unanimously have raised concerns about CETA.

This has the potential to undermine universal access to those services and exacerbate the dual (public-private) system of service provision in the EU.

There is a risk that some businesses will prioritise profit at the expense of the public interest. They may choose to provide services only in urban and wealthy areas and invest in the most profitable sub-sectors.

As Services of General Economic Interest are not fully excluded in an unequivocal way, CETA will increase the tendency to treat those services as commodities. It is likely to lead to people having to pay more and more out of their own pocket, for example for healthcare.

6 | Risking making medicines more expensive

CETA does not recognise that intellectual property rights (IPRs) are an insurmountable barrier to equitable access to medicine.

Although CETA will only affect intellectual property rights in Canada, by securing eight years of market exclusivity for patented medicines it would undermine a critical democratic debate about the price of medicines.

CETA risks locking Europeans and Canadians into a system which allows pharmaceutical companies to charge patients and health services exorbitant prices for medicines that bear no relation to their research and development costs, and fails to address priority health needs.

As opposed to maintaining the current ineffective and costly research and development system rewarding new medicines with fixed-term patent related market- and data exclusivities, CETA could do better. Trade can contribute to the creation of an R&D system that is driven by public health needs and delivers medicines that are universally accessible and affordable.

CETA could increase medicine prices



CETA could make it even easier to charge exorbitant prices for medicines and make it harder for European governments to change existing policies to curb the costs of pharmaceuticals.

Rather than applying innovative practices in Canada and the EU to lower the cost of medicines, the Canadians could end up paying more for longer monopolies, and it could become more difficult for the EU to change monopoly periods. Protection of exclusivity is also extended to non-innovative medicines in Canada. This carries a threat to the sustainability of healthcare financing and especially for patients in countries struggling to meet healthcare costs.



(Image Credit: Council of Canadians)

The inclusion of investment protection will make it particularly hard to change any policies which may affect profit expectations of the pharmaceutical industry. Public authorities may make decisions of major importance to investor interests as part of market authorisation, reimbursement and other regulatory measures. The threat of legal action via an international arbitration court system has the potential to undermine health, value for money and safety considerations.

Direct-to-consumer (DTC) advertising of prescription medicines is allowed in Canada, meaning the ban on DTC in European Union could become harder to maintain after CETA. The regulatory cooperation chapter may have substantial implications in longer-term. In the immediate future, the greatest threat comes from the investment and intellectual property rights protections, which put investors ahead of patients.

“CETA may not require changes to European policies with relevance to pharmaceutical pricing, but it will make it more difficult to change European policies for the better, making CETA just as much of a threat to democracy as the TTIP.”

Meri Koivusalo, Health and Trade Network Board Member, Health and Trade





7 | Cutting tariffs on unhealthy food

By eliminating tariffs on unhealthy food, drinks and meat, CETA could contribute to the epidemic of non-communicable diseases and obesity in Europe.

Almost all existing tariffs on processed food and drinks will be immediately eliminated when CETA enters into force. Tariffs for processed products ('miscellaneous food preparations') will for example fall from 12.8% on average to 0%. This could lead to a further decrease in prices of unhealthy food products, high in: energy, saturated fats, trans-fats, sugar, salt and refined carbohydrates. The impacts merit further study and measures to offset any harm to health.

The impact of increased affordability has not yet been studied in relation to CETA. But relative price reduction of unhealthy food and drink is likely to bring negative impacts in terms of cancers, heart disease and strokes, type 2 diabetes and obesity. These conditions not only significantly reduce the productivity of the European workforce, but incur a massive – and avoidable – chunk of health service expenditure, burdening our health systems and services.

8 | Increasing the health risks related to high meat consumption

OECD data shows that meat consumption is higher than recommended as part of a healthy diet in both the EU and Canada.⁷

Increased trade of meat products is one of the stated gains of CETA. While data suggests some decreasing amount of beef and pork consumption⁸, increased trade in beef and pork between the EU and Canada could contribute to reversing the trend by adding additional market pressure. Governments should be made aware of the health and environmental impacts of increased meat production and consumption rising from increased availability and affordability of meat products.

There is consistent evidence⁹ that high consumption levels of processed meat and red meat are associated with various chronic diseases and an elevated risk of premature death:

- Obesity^{10 11} and Cardiovascular disease¹²
- Type-2 diabetes¹³
- Alzheimer's Disease¹⁴
- Cancer¹⁵

By increasing trade in meat, CETA may well contribute to the excessive use of antibiotics in meat production which is one of the causes of antimicrobial resistance (AMR). The livestock sector is also a major contributor to greenhouse gas emissions and climate change: livestock represented 12-17% of total EU emissions in 2007.¹⁶

⁷ Netherlands Environmental Assessment Agency (2011) The Protein Puzzle: The consumption and Production of meat, dairy and fish in the European Union <http://bit.ly/2axw9te>

⁸ http://www.eea.europa.eu/data-and-maps/daviz/per-capita-eu-27-consumption-1#tab-chart_1

⁹ <http://www.health.harvard.edu/staying-healthy/becoming-a-vegetarian>

¹⁰ Meat consumption is associated with obesity and central obesity among US adults <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2697260/>

¹¹ Meat consumption providing a surplus energy in modern diet contributes to obesity prevalence: an ecological analysis <http://bmcnutr.biomedcentral.com/articles/10.1186/s40795-016-0063-9>

¹² Association of Specific Dietary Fats With Total and Cause-Specific Mortality <http://archinte.jamanetwork.com/article.aspx?articleid=2530902>

¹³ Food sources of fat may clarify the inconsistent role of dietary fat intake for incidence of type 2 diabetes <http://ajcn.nutrition.org/content/ear-ly/2015/04/01/ajcn.114.103010>

¹⁴ Using Multi-country Ecological and Observational Studies to Determine Dietary Risk Factors for Alzheimer's Disease <http://www.tandfonline.com/doi/full/10.1080/07315724.2016.1161566>

¹⁵ IARC Monographs evaluate consumption of red meat and processed meat https://www.iarc.fr/en/media-centre/pr/2015/pdfs/pr240_E.pdf

¹⁶ Bellarby et al. (2012) Livestock greenhouse gas emissions and mitigation potential in Europe. <http://bit.ly/2aMCCpH> & European Commission Joint Research Centre (2013) GHG emissions from the EU livestock sector could be mitigated by up to 60% <http://bit.ly/2aJQSgq>

CETA could contribute to the Non-Communicable Disease (NCD) epidemic by making unhealthy food more available via tariff removal

Noncommunicable diseases (NCDs) are one of the principal causes of mortality and ill-health in the European region. Unhealthy diets are directly linked to the development of NCDs and other chronic conditions including obesity.

Research has found a correlation between the rise in overweight and obesity and a country's integration into globalised food supply chains.^{17 18}

Low price is a major driver of consumption of unhealthy food. Tariff reductions from an agreement like CETA could result in processed and other foods that are high in saturated fat, sugar and salt (HFSS) becoming more available to consumers at lower prices.

Various Combinations of Specific and Ad Valorem Tariffs

What?	Current EU tariff	After CETA
Processed products, miscellaneous food preparations	Starts at 12.8%	0% tariff
Processed pulses and grains, including baked goods, pulse flour, meal and powder	Start at 7.7%	0% tariff
Fresh or chilled beef and veal	Various specific tariffs, e.g.: High quality beef: 12.8% + 176.80 EUR/100kg Current autonomous tariff-rate quota of 20%	0% tariff-rate quota for chilled beef and veal, with gradual phase-in of 5,140 metric tons a year up to 30,840 from Year 6 and beyond
Frozen or other beef and veal	Various specific tariffs, e.g.: High quality beef: 12.8% + 176.80 EUR/100kg Current autonomous tariff-rate quota of 20%	0.0% tariff-rate quota, with gradual phase-in of 2,500 metric tons a year up to 15,000 from Year 6 and beyond
Pork	Various specific tariffs, e.g.: Fresh/frozen swine carcasses: 53.60 EUR/100kg Fresh/frozen hams: 77.80 EUR/100kg	0.0% tariff-rate quota, with gradual phase-in of 12,500 metric tons a year up to 75,000 from Year 6 and beyond

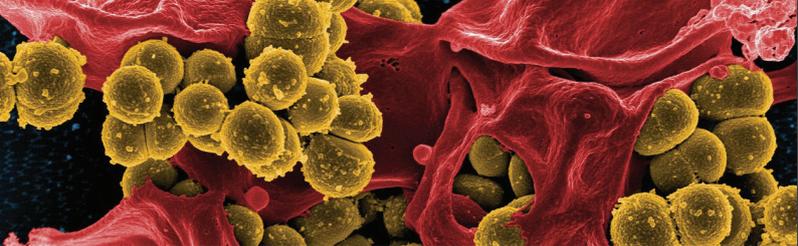
¹⁷ Boyd Swinburn et al. (2009) Increased food energy supply is more than sufficient to explain the US epidemic of obesity. *Am J Clin Nutr.* [online]

¹⁸ Yevgeniy Goryakin et al. (2015) The impact of economic, political and social globalization on overweight and obesity in the 56 low and middle income countries. *The Lancet.* [online]

“The reduction of tariffs has the potential to result in unhealthy foods becoming available to consumers at lower prices and this could contribute to the Non-Communicable Disease (NCD) epidemic in Europe. The EU should learn from other countries’ experience in order to prevent further increases in overweight and obesity in Europe that might result from trade liberalisation.”

Gabriel Siles Brügge, Associate Professor, Department of Politics and International Studies, University of Warwick





9 | Ignoring the global health threat of antimicrobial resistance

High levels of meat and animal product consumption are supported by an intensive livestock production model that is a major driver of drug-resistant infections (antimicrobial resistance, or AMR), posing a major threat to both human and animal health.

If current trends continue, drug-resistant infections could kill 10 million people per year globally by 2050 at a cumulative cost of 100 trillion USD.¹⁹

Via tariff elimination, trade in meat and meat products is expected to increase under the Agreement. This may result in more intensive farming methods, consolidation of larger farm holdings and an increase in antibiotic use.²⁰ While CETA opens up agricultural markets, it does not address the associated risks linked to drug-resistant infections and does not contain specific measures needed to protect the consumer and patients from them. Via the ICS, it would make it more difficult to introduce stricter controls on antibiotic use in meat and dairy animals in future.

10 | Remaining silent on alcohol related harm

CETA is inconsistent with public health if it is used to promote increased availability and affordability of alcohol. The European spirits lobby has been one of the most outspoken supporters of CETA.

CETA does not acknowledge the link between alcohol consumption and major societal impacts including non-communicable diseases and other forms of alcohol related harm, such as addiction, violence, crime and road deaths.

This has the potential to harm health in both Europe and Canada.

Harmful consumption of alcohol is deleterious to health. In total, the societal costs of alcohol in the EU for 2010 were an estimated €155.8 billion. Alcohol is the leading risk for ill-health and premature death for the core of the working age population (25-59 years). 1 in 4 road fatalities in EU are due to alcohol; in 2010 nearly 31,000 Europeans were killed on the roads - 25% of these fatalities were related to alcohol. A recent OECD report shows that alcohol negatively affects countries' socio-economic performance as productivity losses associated with harmful alcohol use are in the region of 5% of GDP in most countries.²¹

¹⁹ Tackling drug-resistant infections globally: final report and recommendations the review on antimicrobial resistance chaired by Jim O'Neill May 2016 - https://amr-review.org/sites/default/files/160525_Final%20paper_with%20cover.pdf

²⁰ Thomas Van Boeckel et al. (2015) Global trends in antimicrobial use in food animals. Proceedings of the National Academy of Sciences. <http://www.pnas.org/content/112/18/5649.abstract>

²¹ Organisation for Economic Cooperation and Development (OECD) report 'Tackling Harmful Alcohol Use: Economics and Public Health Policy', Page 28, line 16. <http://www.oecd.org/els/health-systems/tackling-harmful-alcohol-use-9789264181069-en.htm>

Market access for Wine and Spirits in CETA neglects alcohol related harm

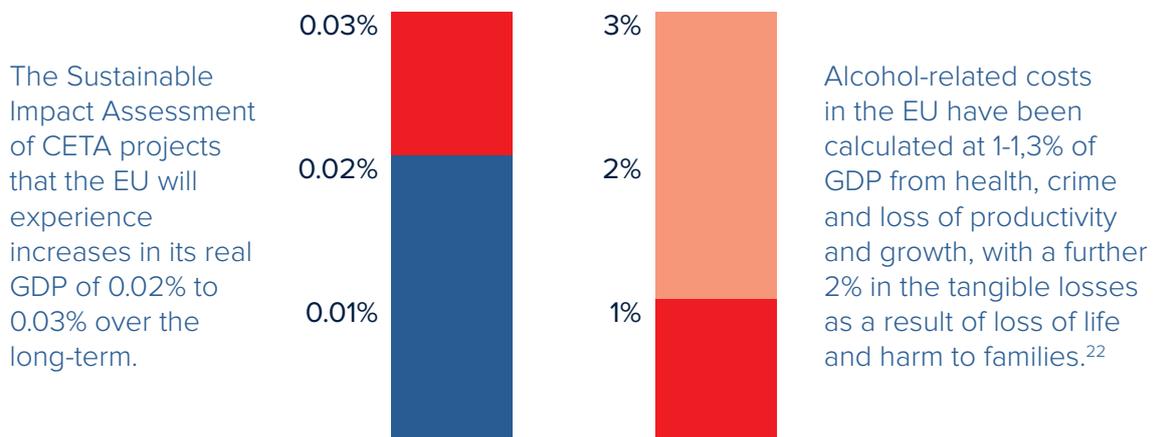


Why is it problematic that CETA does not address alcohol-related harm when it contains a Wine and Spirits Chapter? Why is it troublesome that CETA sets up the Committee on Wines and Spirits without any health representative, or without setting up a Committee on Cross-border health determinants?

Europe is the region with the highest level of alcohol consumption in the world. Alcohol negatively affects work performance and productivity, drains social welfare and healthcare systems and is a contributory factor in crime, accidents and injuries. Alcohol-related harm is pervasive in Europe, often affecting others than the alcohol users themselves, and disproportionately burdening young people and family members.

Alcohol related harm is a major public health concern in the EU and accountable for over 7% of all ill health and early deaths. Young people are particularly at risk of short term effects of alcohol, with alcohol-related deaths accounting for around 25% of all deaths in young men aged between 15 and 29. The OECD quotes a total cost of alcohol of between 1.4%-2.7% of GDP in four developed nations: France, Scotland, US and Canada.

Alcohol costs drain more of EU's GDP than CETA could ever add



²² Nick Sheron, Alcohol and liver disease in Europe – Simple measures have the potential to prevent tens of thousands of premature deaths, Journal of Hepatology, 2016. vol. 64 957-967

“The way CETA deals with alcohol is shocking. Alcohol is no ordinary commodity. It burdens Europe with massive harm – to a degree that alcohol harm costs more of the GDP than CETA could ever hope to add. If the European Commission is serious about economic progress, it should employ evidence-based alcohol control measures instead of fueling even more alcohol harm.”



Kristina Sperkova, International President, IOGT International



11 | Omitting health sustainability aspects

The Sustainable Development Chapters of CETA fail to recognise the public health sustainability aspects as they do not make a reference to key global public health documents such as the United Nations High-level Political Declaration on Non-Communicable diseases (NCDs) or the legally binding WHO Framework Convention on Tobacco Control (FCTC).

CETA currently omits any reference to public health relevant treaties, commitments or objectives.

This is a failure in light of the recently adopted Sustainable Development Goals (SDGs) which both Canada and European governments have committed to achieve.

CETA may conflict with the achievement of SDG Goal 3 on health, which includes sub-targets to dramatically reduce the prevalence of non-communicable diseases, including those related to unhealthy diet and alcohol, to achieve universal healthcare coverage, and to cut the number of road deaths and injuries.

CETA should have been seen an opportunity to contribute to the implementation of the SDGs.

12 | Issuing an interpretative declaration instead of fixing the problems

The declaration is intended to reassure stakeholders including the health community that the 'right to regulate in the public interest' of national governments and of the EU would remain unaltered.

The commitment to voluntary regulatory cooperation gives no reassurance that there would not be a race to the bottom, or regulatory chill when it comes to health-relevant standards.

These reassurances cannot be considered credible unless the parties scrap the ICS provision.

It is unclear if this Declaration can have the legal value that preambles have previously been given in international treaties. Given that it is badged as an 'interpretative' statement, arbitrators in the ICS would view it as an instrument to inform their interpretations.

About EPHA

EPHA is a change agent – Europe's leading NGO advocating for better health.

We are a dynamic member-led organisation, made up of public health NGOs, patient groups, health professionals, and disease groups working together to improve health and strengthen the voice of public health in Europe. EPHA (AISBL) is a member of, among others, the Social Platform, the Health and Environment Alliance (HEAL), the Transatlantic Consumer Dialogue (TACD), the Sustainable Development Goals (SDG) Watch Europe and the Better Regulation Watchdog.

EPHA's Transparency register number is 18941013532-08.

Trade for Health, not health for trade!

The objective of EPHA's campaign on EU international trade policy is to protect and promote public health, to ensure policy coherence between trade and public health and to guarantee policy and regulatory space for governments and the EU.



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