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Subject: Exclude education from CETA

Dear Minister Bussemaker,

We are writing to you on behalf of CNV Onderwijs to raise our deepest concerns with the proposed Comprehensive Economic and Trade Agreement (CETA) being negotiated between the EU and Canada. The European Commission and the Canadian government are planning to announce that negotiations are completed at the upcoming Canada-EU summit to take place in Ottawa on 25-26 September 2014. We are very concerned about the significant commitments that the EU and its Member States have made in privately funded education services in CETA and that these commitments could pose potentially serious risks for educational policy, for educational institutions, and for teachers and students.

If fully applied to public services like education, trade rules can severely restrict public policy space and lock-in and intensify the pressures of privatisation and commercialisation. This explains why education to date remains one of the least-covered sectors in the various trade agreements to which the EU is a party.

If education is included in CETA, the consequences would be serious. Rules governing market access could restrict the ability of EU member states to limit the entry and regulate the quality of private and for-profit schools and institutions. Any measure adopted to promote high quality standards in licensing and accreditation processes could potentially be interpreted as a "disguised barrier to trade" or "more trade burdensome than necessary".

Furthermore, the CETA agreement includes a proposal to include an investor-state dispute settlement (ISDS) clause. This clause is very controversial and the recent debate clearly demonstrates the wide-ranging opposition from trade unions, civil society, citizens and government representatives to include this mechanism in EU trade agreements equally with Canada and the US. The ISDS mechanism would imply that private education companies from the EU and Canada would be given the right to legally challenge before international tribunals any measure adopted by the other party they feel interferes with their profits. This could have a serious impact on democratic decision-making in the sector. More broadly, ISDS establishes a system of judicial protection which is only available to foreign investors and thereby discriminates against domestic companies. As such, ISDS circumvents the domestic court system. ISDS poses real and serious dangers to democratic decision-making and governments' right to regulate. The extraordinary cost of defending investor-state dispute settlement cases is likely to deter governments from pursuing policy goals or taking regulatory measures that may have an impact on foreign investors. The above mentioned risks should be

considered against the fact where this mechanism is not necessary in the proposed trade agreements with Canada and the US.

Furthermore, it is highly problematic that the European Commission attempts to conclude CETA with ISDS, while at the same time not finalising its review of the responses to the public consultation on ISDS in TTIP. According to the European Commission there is no link between ISDS in CETA and ISDS in TTIP. We dispute this interpretation. From our viewpoint there is an evident link between ISDS in these two proposed trade agreements. The fact is that the reference text to the public consultation on ISDS in TTIP was based on the CETA text on ISDS. The prospect of including ISDS in CETA would furthermore make it a dangerous precursor for ISDS in TTIP.

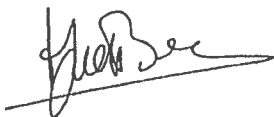
On Friday 12 September 2014 the EU Trade Policy Committee will meet in Brussels to discuss the CETA text. In light of the strong and legitimate concerns about ISDS and in order to take into account the results of the public consultation on ISDS, we request you to insist that ISDS must be removed from CETA or at least calling for CETA to be frozen until the issue of ISDS in TTIP is resolved and thereby preventing a fait accompli being established in relation to TTIP.

Similarly, we believe that the Member States should press for a general exclusion or carve-out for education and other vital public services. Current language, such as that in the WTO's General Agreement on Trade In Services (GATS) that provides an exemption for "services supplied in the exercise of governmental authority" has been shown to be unclear and open to conflicting interpretations. A more definitive and broad exclusion is needed.

Commercial trade rules must never restrict the ability of governments and designated public authorities to provide quality public education. We urge you to ensure this by explicitly excluding all education services from CETA.

We kindly request your active support to safeguard European quality education.

Sincerely,

A handwritten signature in black ink, appearing to read 'Helen J. van den Berg', written over a horizontal line.

Helen J. van den Berg
President CNV Onderwijs



Ministry of Foreign Affairs

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Our reference
Minbuza 2014. 652385

Date 17 November 2014
Re Your letter to Minister Bussemaker regarding education in CETA

Dear Mrs. van den Berg,

I have read your letter concerning the free trade agreement between the EU and Canada (CETA) with careful attention. Since international trade falls within my remit, I am replying to you on behalf of Minister Bussemaker. In your letter you raise concerns about the inclusion of education in CETA, as well as the inclusion of an investor-state dispute settlement clause. I acknowledge your concerns and would like to thank you for your input.

First of all, it should be noted that under the free trade agreement between the EU and Canada (CETA), the EU has complete freedom to take or preserve measures relating to all forms of education that are in any way subsidised by the state and can therefore be categorized as public education. I should emphasise that government regulation of public education does not as such constitute a barrier to trade but merely serves to safeguard the quality, accessibility and efficiency of public education. It is for this reason that public education has always been exempt from the obligations under trade agreements to which the EU is party, including CETA.

Other, privately funded education, such as language training and management training, is however included in CETA. For this type of education the Netherlands has not taken any discriminatory measures against foreign service providers. As long as they observe the legislation that also applies to Dutch service providers, foreign service providers are currently free to offer their services on the Dutch market or establish business in the Netherlands. This is not the case in several other EU member states where, for example, company directors are subject to nationality requirements. Companies may also have to pass an economic need assessment before being allowed to offer their services. The CETA provisions on privately funded education will not alter the current situation in the Netherlands. This has been laid down by the Netherlands in relation to privately funded adult education in other trade agreements to which the EU is party, including the free trade agreement concluded with South Korea in 2011.

In your letter you also request that the investor-state dispute settlement (ISDS) clause be removed or its inclusion halted pending the results of the public consultation on ISDS in the free trade agreement between the EU and the US (the *Transatlantic Trade and Investment Partnership*, or TTIP). Although the negotiations with Canada have officially been concluded, the European Commission has reserved the right to adopt technical amendments as regards an

ISDS clause should the results of the aforementioned public consultation give cause to do so.

I have had a study carried out of the risks and opportunities arising from an ISDS clause in TTIP. The study proposed improvements to the ISDS mechanism, as well as ways of mitigating the risks. It also highlighted a number of improvements necessary in relation to investment protection and ISDS along the following lines:

- restrict access to ISDS by means of extra filters that limit the admissibility of claims, such as a ban on parallel claims, the exclusion of frivolous claims and the possibility of mediation;
- ensure parties to the agreement are given sufficient policy scope through the inclusion of a clear provision that allows them to take non-discriminatory legislative measures in order to protect public interests, such as health, the environment, animal welfare, labour rights, etc. without running the risk of incurring ISDS claims;
- delimit the scope of investment protection by excluding letterbox companies, restricting the umbrella clause, excluding ISDS claims for market access, including exemptions to allow for prudential measures and making standards clearer so as to limit arbitral tribunals' scope for interpretation;
- improve the arbitration procedure by creating greater transparency, introducing a code of conduct, preparing a list of independent and qualified arbitrators, establishing an appellate mechanism and enabling parties to the agreement to issue binding interpretations to prevent undesirable interpretations.

For the study in question and the assessment thereof I refer you to Parliamentary Papers 21 501-02 no.1397. I fully endorse the outcomes of this study. Currently, it seems that CETA already addresses many of the abovementioned improvements and we are currently looking into the possibility of further technical amendments together with several other Member States.



Lillianne Ploumen
Minister for Foreign Trade and Development Cooperation
of the Kingdom of the Netherlands