

EXECUTIVE COMMITTEE OF COUNCIL

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

**SUBJECT: UBCM MEMBER RELEASE: COMPREHENSIVE ECONOMIC AND
TRADE AGREEMENT (CETA)**

RECOMMENDATION:

1. THAT Council adopt the resolution Regulation of Public Water Services and forward to the 2012 UBCM Convention.

REPORT

The Executive Committee of Council, at its meeting held on 2012 April 19, received and adopted the *attached* report providing the wording for a UBCM Resolution regarding municipal procurement of water services and the Comprehensive Economic and Trade Agreement (CETA).

Respectfully submitted,

Councillor P. Calendino
Chair

Councillor P. McDonell
Vice Chair

Councillor D. Johnston
Member

Copied to: City Manager Deputy City Manager(s) Director Planning & Building Director Finance

TO: CHAIR AND MEMBERS
EXECUTIVE COMMITTEE OF COUNCIL

DATE: 2012 April 13

FROM: DIRECTOR FINANCE

FILE: 7400 - 01

SUBJECT: **UBCM MEMBER RELEASE: COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA)**

PURPOSE: To provide wording for a UBCM Resolution regarding municipal procurement of water services and the Comprehensive Economic and Trade Agreement (CETA).

RECOMMENDATION:

1. **THAT** the Executive Committee of Council recommend to Council that the resolution **Regulation of Public Water Services** be adopted and forwarded to the 2012 UBCM Convention.

REPORT

The Executive Committee, at its Open meeting on 2012 March 16, received a UBCM - Member Release regarding an update on the most recent correspondence from the Federal Government to the FCM about CETA as it relates to local government procurement obligations. The communication included a Q&A document prepared by federal government officials.

Upon review and discussion of the information received from the UBCM the Executive Committee adopted a motion that staff prepare a second resolution for review by the Committee for submission to the UBCM requesting that municipal procurement of water services be exempt from CETA. The Executive Committee also requested staff consider specific text in the UBCM document when preparing the second resolution.

Background

The Comprehensive Economic and Trade Agreement (CETA) is a proposed free trade agreement between Canada and the European Union EU. Canada and the EU have a long history of economic cooperation. Composed of 27 Member States with a total population of over 500 million and a GDP of nearly \$16.8 trillion in 2010, the EU is the world's largest single common market, foreign investor and trader. As an integrated block, the EU represents Canada's second largest trading partner in goods and services.

To: Executive Committee of Council
From: Director Finance
Re: UBCM MEMBER RELEASE: COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT (CETA)
2012 April 13..... Page 2

Canada and the European Union (EU) have completed the ninth round of negotiations toward a Comprehensive Economic and Trade Agreement (CETA). Canada and the EU are committed to building on the success of negotiations thus far, where significant progress has been made across the board, including the areas of goods, services, investment, government procurement and many others. The negotiating text is now well-advanced, with many chapters closed or parked pending further development, and issues in the remaining chapters narrowed down to key differences where solutions are now being actively explored.¹

Since the inception of CETA, which was formally launched in May 2009, Council has strongly opposed the negotiation of a unilateral agreement that may result in municipalities being forced to privatize the operation of their services and facilities. In 2010, Council submitted a resolution to the UBCM to request that the UBCM work with the Province of BC and through the FCM with the Federal Government to negotiate a clear, permanent exemption for local governments from CETA.

The context of Council's resolution sprang from experiences that demonstrated that the European Union and European corporations, through CETA, are requesting full access to procurement at the local government level. Council is concerned that left unaddressed this could significantly reduce or eliminate the rights of local government to specify local priorities when public money is invested in goods, services or capital projects. The final report for the *EU-Canada Sustainability Impact Assessment (SIA)* released June 2011 acknowledges that "A government procurement chapter in CETA will have a variety of economic impacts that are positive for some and negative for others. The main effect of the chapter would be to encourage competitiveness in the bidding process. It could potentially create some reductions in economic (and social, and potentially environmental) policy space...". This report comes after more than three years of negotiation and discussion. It is evident that the impacts of the proposal are still unclear, given the complexity of the issues and given that many of the impacts have been determined using high level modeling techniques, which may or may not reflect actual outcomes. What the reductions in economic, social and potential environmental policy will mean, especially at the local government level is still very much a concern of Council. Government procurement, at all three levels, is still a major chapter included in CETA.

Timeline of Council Events Regarding CETA

2010 Fall

Burnaby's 2010 CETA resolution was developed to request that the UBCM work with the Provincial Government to negotiate a clear, permanent exception for local governments from CETA. Burnaby's resolution was similar to another resolution submitted to the UBCM by the District of Logan Lake. The District of Logan Lake was identified as the ultimate sponsor of the resolution and it was adopted in the fall of 2010 by the UBCM and referred to the Federation of

¹ Canada-European Union - Comprehensive Economic and Trade Agreement (CETA) Negotiations: Status of the Negotiations, as outlined by the *Foreign Affairs and International Trade Canada*
<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/eu-ue/can-eu.aspx?view=d>

To: Executive Committee of Council
From: Director Finance
Re: UBCM MEMBER RELEASE: COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT (CETA)
2012 April 13..... Page 3

Canadian Municipalities (FCM) and the Provincial Government. The text of this resolution is as follows:

Comprehensive Economic and Trade Agreement (CETA)

THEREFORE BE IT RESOLVED that the UBCM request:

- a briefing from the Province of BC on the scope and content of trade negotiations with the European Union;
- the Federation of Canadian municipalities to provide sector-by sector analysis of the potential impacts on municipal functions and powers of the procurement regime that the European Union is seeking;
- the Federation of Canadian Municipalities to urge the government of Canada not to provide the European Union with access to sub national government procurement; and
- that the provincial government negotiate a clear, permanent exemption for local governments from CETA.

The Province of BC responded to the CETA resolution with the comment that they were legislated to consult with the UBCM under the Community Charter. They also advised, that for the first time, provincial governments had been invited to participate in international trade agreement negotiations, specifically CETA and that the Province had been informing UBCM staff about the ongoing trade negotiations with the exception of confidential information.

The FCM responded to CETA resolution by affirming receipt but by advising that the resolution would not be sent for consideration by FCM Board. FCM staff commented that:

- the CETA resolution was not in accordance with existing FCM policy regarding trade negotiations (see Attachment 1);
- “the guidelines of the FCM represent the position of the Board which favours developing fair trade in the interests of our country, our communities and our citizens;
- “if the federal and provincial governments wish to enter into agreements that affect areas of municipal responsibility or concern, there needs to be a concerted effort to consult the municipal experts that know the issues best”; and
- “achieving a successful outcome to a trade negotiation requires that all orders of government continue working together on behalf of Canadians”.

The CETA resolution was classified by the FCM staff as Category E: not in accordance with existing FCM policy.

2011 February

In 2011 February the Canadian Union of Public Employees BC provided a package to Mayor and Council highlighting their concerns regarding the impact CETA could have on the delivery of public water systems and water management in Canada. Under New Business a motion was

To: Executive Committee of Council
From: Director Finance
Re: UBCM MEMBER RELEASE: COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT (CETA)
2012 April 13..... Page 4

adopted by Council that the Mayor write to the Federal Government in support of CUPE BC's concerns.

On February 21 the Mayor wrote that Council shares the concerns of CUPE BC that "this agreement presents a serious threat to Canada's public water systems"; and that Council shares the concern of CUPE BC regarding the "detrimental effect of proposed services, investment and procurement commitments in CETA on public water systems and water management in Canada".

The Mayor again requested that the Federal Government "negotiate a clear, permanent exemption for municipalities from CETA".

2011 March

On 2011 March 21, the Council of Canadians and CUPE BC presented two resolutions to Council for their consideration and recognized Burnaby with a Blue Community Award.

A Blue Community is one that adopts a water commons framework by taking the following three actions:

- Recognizing water as a human right
- Promoting publicly finance, owned and operated water and wastewater services
- Banning the sale of bottled water in public facilities and at municipal events.

The two resolutions addressed:

- the potential impact of CETA on public ownership of water systems and water management in Canada; and
- the need for increased Federal investment for the renewal and replacement local government infrastructure in a manner that ensures continued public ownership.

Council was in support of both resolutions and adopted a motion for staff to reword the resolutions for submission to the 2011 UBCM Annual Meeting.

At the same meeting, Council adopted a second motion that the Mayor write to the FCM Board of Directors requesting that the UBCM CETA resolution be placed on table for consideration at the next FCM meeting held in 2011 September.

The Mayor's correspondence 2011 March 23 to the FCM once again reinforced Council's position that CETA is, "an extremely important issue, one that could affect local governments across Canada. We strongly believe it should be considered by the Executive of the FCM, and if deemed appropriate, brought to the attention of the Federal Government for a fulsome discussion of the ramifications on local governments."

To: Executive Committee of Council
From: Director Finance
Re: UBCM MEMBER RELEASE: COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT (CETA)
2012 April 13..... Page 5

2011 June

A Council Report dated 2011 June 6 provided recommended wording for a Blue Community Resolution for submission to the UBCM. The report also contained a recommendation to direct correspondence to the Honourable Edward Fast, P.C., M.P., Federal Minister of International Trade and Minister of the Asia-Pacific Gateway outlining Council's support for the public and non-profit ownership and operation of water and wastewater treatment services in Canada; both recommendations were adopted by Council.

2011 July

At the Open Council meeting of 2011 July 25, correspondence in response to the Mayor's letter of 2011 February 21 was received from the Honourable Edward Fast, P.C., M.P., Federal Minister of International Trade and Minister of the Asia-Pacific Gateway. Honourable Edward Fast notes in his letter that the CETA negotiations offer a "huge opportunity for Canadians" and he goes on to elaborate on the history and economic benefits a closer economic partnership would have for Canada and the EU. He also specifically comments on Council's concerns regarding water in the following excerpt:

"Drinking water in Canada is currently delivered to citizens by municipal, regional or provincial governments, either directly by these governments or through procurement by these governments of water distribution services. In the CETA negotiations, Canada will continue to preserve the right of governments to provide water services to Canadians. Moreover nothing in any on Canada's international trade agreements can force countries to privatize or to deregulate their public services. Decisions to either privatize or deregulate in certain public sectors are guided by domestic policy decisions.

With respect to fresh water resources, it is Canada's long-standing position that water in its natural state is not considered a good or product and therefore remains outside the scope of Canada's trade agreements."

After consideration of the Honourable M.P. Fast's correspondence, which emphasized the role and responsibility assigned to the Provincial Government, Council adopted a motion that Mayor write to the Provincial Government drawing attention to the Minister's comments and include a copy of the UBCM adopted CETA resolution.

2011 August

On August 4, the Mayor wrote the Provincial Government and drew attention to Honourable M.P. Fast's correspondence specifically "procurement conducted by municipalities, schools or hospitals is the responsibility of provincial and territorial governments and any commitments undertaken in this area would only be done with the consensus of the relevant province or territory." The Mayor went on to say, "as Provincial governments appear to have such a prominent role in shaping the Agreement, Burnaby City Council is once again requesting the

To: Executive Committee of Council
From: Director Finance
Re: UBCM MEMBER RELEASE: COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT (CETA)
2012 April 13..... Page 6

Province of British Columbia negotiate a clear, permanent exemption for local governments from CETA.” A copy of the UBCM resolution was attached.

2011 September

Burnaby’s Blue Community Resolution was adopted by the UBCM at the 2011 Convention (September 26-30) and forwarded to the FCM. The text of this resolution is as follows:

Blue Community

WHEREAS public health depends on equitable access to clean water supplies;

AND WHEREAS the public ownership and operation of drinking water and wastewater treatment systems has improved access and quality, and public operation has been shown to cost-effective, efficient, transparent, accountable and responsive to changing technology, priorities, and community needs:

THEREFORE BE IT RESOLVED that the Union of BC municipalities call upon the Federal Government, through the Federation of Canadian Municipalities and/or other avenues, to fulfill its responsibility to invest in the renewal and replacement of aging local government infrastructure, including that related to drinking water and wastewater, in a manner that ensures continued public ownership.

2011 October

Correspondence was received from Paul and Anna Bjarnason and Chris Brown regarding their concerns about CETA. Council passed a motion to advise the writers of the passed resolutions adopted by Council regarding the agreement.

2012 February

At Open Council on 2012 February 6, correspondence was received from CUPE BC President, Barry O’Neill requesting Burnaby Council’s consideration of two resolutions, one was regarding federal funding provided for infrastructure projects and one was regarding CETA. In the Open Meeting Council acknowledged their support in principle of the recommendations of CUPE BC. City staff were requested to review the wording of both the District of Mission’s resolution regarding P3 Federal Infrastructure Funding aimed at providing more opportunity for municipalities to utilize limited Federal funds by removing the restriction that required the project to be a Public-Private Partnership and the CETA resolution. The correspondence was referred by Council to the Executive Committee of Council.

At the Open Meeting of the Executive Committee 2012 February 16 a resolution regarding Federal Funds for Infrastructure Projects was adopted and forwarded to Council for consideration. Arising from further discussion on CETA, staff are requested to prepare another resolution related to local procurement and water services.

To: Executive Committee of Council
From: Director Finance
Re: UBCM MEMBER RELEASE: COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT (CETA)
2012 April 13..... Page 7

2012 March

At Open Council on 2012 March 05 the following Executive Committee resolution was adopted for submission to LMLGA for the 2012 UBCM in September.

Federal Funds for Infrastructure Projects

WHEREAS the Government of Canada has taken a leadership role in supporting Canadian municipalities in the building of infrastructure projects in their communities through the provision of various infrastructure funding programs which are by necessity limited to available funds;

AND WHEREAS municipal governments are an order of government with the responsibility and authority to manage and deliver effective and efficient infrastructure programs to their community:

THEREFORE BE IT RESOLVED that the FCM call on the Government of Canada to replace restrictive funding initiatives such as the Public-Private Partnership Funds with funding criteria that supports municipal infrastructure project funding requests based on the merit of the proposal; empowering municipalities to choose the most cost effective and efficient funding method (P3 or other) for the construction and delivery of an infrastructure program in their community.

On the same agenda correspondence was received from the UBCM formally advising Council of the FCM's response to the Blue Community Resolution. The FCM classified the Blue Community resolution as Category D *in accordance with FCM policy* and referenced a related FCM resolution **A Fair Plan for Implementing New Federal Wastewater Regulations**. The response also noted "we recognize and acknowledge that this is an important issue as indicated in FCM's 2012 pre-budget submission²".

The following Federal Government response was forwarded by the UCBM, in response to the question, "Will giving access to procurement by municipalities encourage privatization of public water systems?"

- Nothing in any of Canada's international trade agreements can force countries to privatize or to deregulate their public services. Decisions to either privatize or deregulate in certain public sectors are guided by domestic policy decisions. When a government decides to do so, foreign companies who enter the market are always subject to Canadian laws and regulations.

² KEEP MOVING FORWARD: Pre-Budget Submission Federation of Canadian Municipalities Fall 2011, published by the *Federation of Canadian Municipalities*
www.fcm.ca/Documents/reports/2012_Pre_Budget_Submission_EN.pdf

To: Executive Committee of Council
From: Director Finance
Re: UBCM MEMBER RELEASE: COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT (CETA)
2012 April 13..... Page 8

- Obligations in the Government Procurement Chapter of the CETA will not force municipalities to privatize water distribution, nor prevent municipalities from setting standards to ensure that Canadians have access to safe drinking water.
- If public water treatment and distribution entities are covered under CETA, this simply means that any procurement of goods or services in support of the government ability to provide such water services would be required to follow the obligations of the chapter.

Summary

As outlined in this report, to-date Council has forwarded three CETA related resolutions to the UBCM. Two resolutions have been considered and adopted:

- Comprehensive Economic and Trade Agreement (CETA) – 2010
- Blue Community – 2011

These two resolutions were provided to the FCM through the UBCM but not adopted by FCM. The CETA resolution was found to be not in accordance with existing FCM policy regarding trade negotiations and, therefore, not supported. The Blue Community Resolution was received and found in accordance with FCM policy, but only as it related to a 2010 wastewater resolution prepared by the FCM.

In addition, Council has submitted letters of correspondence to both the Federal and Provincial government drawing attention to the Council's concerns seeking recognition and support for the CETA and the Blue Community resolutions. Both the Provincial and Federal Government's have acknowledged the concerns of Council and the UBCM, but negotiations have proceeded with Government Procurement as major chapter in CETA. Notwithstanding, no definitive language amendment has been recommended for CETA regarding the exclusion of the procurement of water services.

It is therefore recommended that Council seek legislative tools to safeguard water services, best delivered as public services, through resolution at the UBCM Convention in September. To be eligible for consideration the resolution must be adopted by Council and submitted prior to the 2012 June 30 UBCM deadline.

Recommendation

The City of Burnaby has developed sustainability strategies to provide a framework to help achieve balanced decisions that give weighted importance to social, environmental, and economic objectives, as defined by Burnaby citizens. The following resolution reflects the general assertion that the Federal Government should ensure trade agreements do not restrict or prohibit the ability of local governments to determine those services that, in a balanced consideration of the public interest, require explicit protection.

To: Executive Committee of Council
From: Director Finance
Re: UBCM MEMBER RELEASE: COMPREHENSIVE
ECONOMIC AND TRADE AGREEMENT (CETA)
2012 April 13..... Page 9

The resolution draws attention to Council's position of public ownership for the operation of key community services, especially those related to public health such as drinking water and wastewater which are essential to the citizens of Burnaby and all Canadians.

The proposed wording of the resolution follows:

Resolution: **Regulation of Public Water Services**

WHEREAS the successful delivery of a Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU) requires the Federal Government to negotiate full access to procurement to sub-national governments including local governments, social boards, and other provincial agencies;

AND WHEREAS the Government of Canada is fully committed to preserve the right of all Canadians to safe water services and believes that water in its natural state is not considered a good or product and, therefore, remains outside the scope of Canada's trade agreements;

THEREFORE BE IT RESOLVED that the Union of BC municipalities call upon the Federal Government, through the Provincial Government and the Federation of Canadian Municipalities, to enact strong domestic policy to preserve the right of provinces, territories and local governments to provide safe water services for the collection, purification and distribution of water, including the provision of drinking water, water management, and waste water management for Canadians as a public service;

AND BE IT FURTHER RESOLVED that the Federal Government identify and invest needed funding to support sub-national governments in carrying out this mandate.

This resolution is provided for the consideration of the Executive Committee.

Denise Jorgenson
DIRECTOR FINANCE

DJ:ml

Copied to: City Manager
Director, Planning and Building



FEDERATION OF CANADIAN MUNICIPALITIES
FÉDÉRATION CANADIENNE DES MUNICIPALITÉS

Backgrounder

FCM has developed seven principles for the federal government to apply to CETA or any future trade deal:

1. **Reasonable procurement thresholds:** Inappropriately low or broad procurement thresholds may force municipalities to tender projects when tendering is neither practical nor financially justified.
2. **Streamlined administration:** Ensuring that municipal procurement policies are free-trade compliant will likely create new costs and may require specialized expertise. The administrative design of these rules must be as streamlined as possible and developed in close cooperation with municipal procurement practitioners.
3. **Progressive enforcement:** Enforcing provisions of any deal should be progressive, starting with verbal or public warnings before moving to financial penalties, and should recognize and not penalize inadvertent non-compliance, particularly in cases where municipalities do not have the expertise to appropriately apply the rules.
4. **Canadian content for strategic industries or sensitive projects:** A trade deal must recognize strategic and public interest considerations before barring all preferential treatment based on country of origin. There may be industries of strategic significance to a particular region, such as transit, or projects where considerations of quality, public benefit, environmental protection or business ethics means that a local government may wish to implement minimum Canadian-content levels. This should be allowed, within reason.
5. **Dispute resolution:** A dispute-resolution process, like the one in NAFTA, may require a careful review of the municipal role in that process so they can appropriately defend their policies and by-laws as an order of government.
6. **Consultation and communications:** Consultation and communications during negotiations are required to ensure any resulting agreement responds to municipal concerns.
7. **Reciprocity:** Canada's negotiating position must support reciprocity in Canadian and foreign municipal procurement practices.