



GIET

To the attention of the candidates for the European elections of May 25th 2014.

Free Trade Agreements : Intellectual property rights over seeds or food sovereignty, the European Deputies must choose.

As a candidate for the position of Member of the European Parliament, you might soon be required to work on a **free trade agreement** between the European Union and other countries or regions. Agreements of this type already exist or are under negotiation covering many issues that go far beyond the mere issue of free trade. They are comprehensive economic and trade agreements that include clauses on investment, government procurement, intellectual property, health, environment etc..

Our organizations want to draw your attention to one of the issues, that has received little consideration in this debate, but that challenges the foundation of food sovereignty and agriculture. These are questions of intellectual property over seeds and over the plant world in general.

The free trade agreement between the United States and the EU raises strong concerns in Europe and in the United States. There is less talk of **the agreement between Canada and the EU (CETA)**. Yet on 18 October 2013, José Manuel Barroso, President of the European Commission, and Stephen Harper, Prime Minister of Canada announced its conclusion: **it must now be ratified by the future MEPs.**

Despite the opacity of the negotiations and the fact that the document is not public, leaks allow us to know that the draft of CETA includes an important section on intellectual property rights and thus impacts **the rights of farmers to use their own seeds**. The intellectual property provisions in these agreements become a template that is reproduced from one treaty to the next, as long as no stop is put to it. You have the power to stop it.

- An increasing loss of democratic and institutional control -

First of all it is important to remember that the European Parliament rejected the ACTA (Anti-Counterfeiting Trade Agreement) in 2011. ACTA intended to strengthen the enforcement of intellectual property rights and the collaboration between States putting them in the service of business. **However, at this very moment the clauses rejected by the European Parliament have reappeared in the free trade agreements under discussion !**

In the meanwhile, the general European context has changed. Indeed, the creation of a unified European patent court raises the question of how democratic control is exercised over the field of intellectual property. This new jurisdiction depends in effect on international law outside of the institutions of the European Union. As a result, when the free trade agreement between Canada and the EU mentions "a competent legal authority" that imposes measures to enforce intellectual property rights, it will be this new court of justice that will deal with European patents.

These treaties must also be analysed in the context of the numerous patents that have been attributed in recent years to plants selected by "non-natural" techniques of genetic modification (either by implanting foreign genes — "transgenesis" or by forcing the mutation of existing ones — "mutagenesis"). As they are alive, these plants reproduce and "contaminate" the field of the farmers who become inadvertently infringers of intellectual property rights. In addition, the European Patent Office has illegitimately attributed an increasing number of patents to plants, animals and other organisms selected by traditional breeding methods.

- In practice: the FTAs invalidate the "exception for food and agriculture" partially achieved in the French law against counterfeiting –

Since 26 February 2014, the French law against counterfeiting recognizes a partial "exception for food and agriculture" that excludes farm-saved seed from the scope of its application¹. The current provisions of the draft of a free trade agreement between the EU and Canada jeopardize this achievement. As a matter of fact, international agreements take precedence over national law. This has been experienced recently in Colombia: under the free trade agreement with the United States and under pressure from Monsanto, the Colombian State had to strictly apply the enforcement of plant breeders rights (PBR) that led to the massive destruction of crops produced from seed saved on farm (and subsequently to massive farmers' riots).

In a similar vein, if Monsanto Canada wants to make an accusation of infringement against a PBR over seed sold/used in France, the clauses on intellectual property in the free trade agreement may prevail. **The exception granted in the French law would no longer be worth anything.** Moreover, even if the Treaty is terminated by the European Union or Canada, Monsanto could up to 20 years after the date of termination, accuse France of having caused a shortfall in profits and seek compensation with cumulated interest!

Following the model of previous agreements (with Korea for example), the free trade agreement between the EU and Canada includes **a set of draconian measures** requiring economic actors to respect intellectual property rights:

- a farmer accused to be fraudulently in possession of seeds of a variety protected by a PBR or containing a patented genetic trait could see his property seized and bank accounts frozen (art 18.3)
- without the farmer necessarily being heard, the competent judicial authorities (including the international jurisdiction governing the European unitary patent) may, on the mere presumption of infringement, order "the physical seizure of the alleged infringing goods", confiscate the harvest, the seeds, the machinery and accounting books (art 16.2).
- if the farmer is found guilty, his harvest, seeds and agricultural implements can be destroyed (art 19.1) at his expense (art.19.2).
- interlocutory injunctions may be issued to prevent an infringement (art 20). In practice, this concerns the seed cleaners and any buyer of crops from farm seeds considered counterfeit. In the absence of conclusive evidence of the source of seed used, they may be suspected of harbouring infringement (art 18 1,2,3). The judiciary could then force them to cease and desist.

The chapter on intellectual property rights in the free trade agreement between Canada and the European Union would lead to **a climate of fear and suspicion where farmers have to fear being denounced as infringers** (art 17). To work on their own selection and produce farm saved seeds becomes very complicated. Farmers will have to buy more seeds to avoid any presumption of infringement. In the debate on the French law against counterfeiting, many of us have already denounced the unacceptable consequences of such measures and our concerns were heard to some extent by the French parliamentarians.

The position of the next European Parliament on the free trade agreement between Canada and the EU will be decisive for how intellectual property rights will be exercised over seeds, which are the foundation of our agriculture and food sovereignty. We cannot accept that this agreement thwarts the democratic processes on the European level (the rejection of ACTA by the European Parliament in 2011) and national level (French Law on counterfeiting). We refuse to accept that free trade agreements are selling off farmers' rights to increase the profits of the seed industry. This is one of many reasons why **we ask you to announce, before the elections on 25 May, that you will reject the agreement when it will be voted in the European Parliament.**

We would like to thank you in advance for your commitment to refuse these free trade agreements and to address these major challenges. Please accept the expression of our highest consideration,

List of signatories : FNAB, OGM Dangers, Bio Consom'acteurs, Attac, Chrétiens dans le Monde Rural – CMR, FIAN, Réseau Semences Paysannes, Les Poissons Roses, Confédération Paysanne, Fédération Nature & Progrès, Solidaires Douanes, FNCIVAM, Amis de la Terre, CNDSE, Fédération Nationale Accueil Paysan, Fondation Sciences Citoyennes, AITEC, Artisans du Monde, Syndicat Simples, Demeter France, MIRAMAP, Agir Pour l'Environnement, GIET.

With the support of : Bio Consom'acteurs PACA, Filière Paysanne, Consommateurs pas Cobayes, UDB - Union Démocratique Bretonne, Bio de Provence-Alpes-Côte d'Azur.

This letter has the support of the NFU, National Farmers Union of Canada.

Please answer to contact@semonslabiodiversite.com ;

Your commitment will be posted on the website : <http://www.semonslabiodiversite.com/>

¹Art. L. 623-24-1 et L. 623-44. of the intellectual property right : more precisely the 21 derogatory species are excluded