The Trans-Pacific Partnership Agreement: Some Critical Concerns[1]

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Paltry and Uncertain Growth Effects

As most TPP partner countries already have trade agreements with one another, additional trade from the Trans-Pacific Partnership Agreement (TPPA) will be modest.[2]

For example, according to a recent (January 2016) World Bank study, Canada stands to gain almost nothing from the TPPA. The World Bank study finds that the TPPA would boost Canada's economy by just 1.2% and exports by about 7%by the year 2030.[3] The study explains that highly developed nations such as Canada are either relatively reliant on things other than trade for economic growth or are already fairly free of trade restrictions. For example, almost 81% of Canada's exports in 2015 went to countries with which Canada has already implemented or signed free trade agreements. They also accounted for the bulk (around 74%) of Canada's imports in 2015.

It is good that the Canadian Government has decided to closely examine the TPPA impacts. It is heartening that the Honourable Minister committed to share the findings of the study with the Canadians.[4]

The study by the Global Affairs Canada, commissioned by the Honourable Trade Minister finds that joining the TPP would provide a net advantage to Canada resulting from increased market access and greater regional economic integration with Asia-Pacific countries. Should Canada choose to be a party to the TPP Agreement, this is projected to boost Canada's GDP by 0.127% above baseline performance in the longer term, i.e., by 2040!

This modest gain is because the TPPA is likely to have negative impacts on Canada's existing preferential 'free trade' (such as NAFTA) partners as it opens up new markets. The sector that will be affected most by the erosion of NAFTA preferences is the automotive sector. With more than 80% of Canadian automotive production exported to the US, Canadian automotive production will decline. Overall, Canadian exports of automotive products to the US are projected to decline by US$3.6 billion, or a 4.7% decline in total Canadian automotive exports to the US. This is important if Canada wants to retain its manufacturing base and industrial capabilities.

The study also concluded that if Canada chooses not to be a party to the TPPA, while all 11 other TPP members are part of it, Canada's GDP losses are estimated at $5.3 billion, against estimated gains of $4.3 billion if it is in the TPP. This is the result of losses due to anticipated preference erosion in existing FTA markets, particularly with the US and Mexico, which would

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[1] This submission draws heavily fromJomo Kwame Sundaram. "The Trans-Pacific Partnership Agreement: Some Critical Concerns". Working Paper Series, Initiative for Policy Dialogue, Columbia University, New York, October2016, 56pp.

[2]See James K. Jackson. 'The Trans-Pacific Partnership (TPP): Analysis of Economic Studies'. Congressional Research Service, June 30, 2016. This report analyses some of the most influential studies of the economic impacts of the TPP affecting the public policy as well as the economic models used to assess the methodology and assumptions used to generate these estimates.

[3]World Bank, *Global Economic Prospects*, January 2016, Ch. 4

[4] http://ipolitics.ca/2016/05/19/freeland-commits-to-sharing-tpp-economic-study-with-canadians/

occur regardless of whether Canada were party to the Agreement, offset by gains from preferential access to other TPP countries in the event of membership.

However, there is a potential conflict of interest in asking the government department responsible for negotiating the deal to also do the impact analysis. The Government should have commissioned an independent study instead. Fortunately, a number of such studies are available.

For example, the Toronto based C.D. Howe Institute study found that the TPPA would boost real GDP by just 0.02% in 2018, and by a cumulative aggregate of 0.08% in 2035.[5] It also noted additional costs for companies trying to access reduced tariffs in the agreement.

The study by the Canadian Centre for Policy Alternatives, published in May 2016, also expressed doubts about the claimed positive impacts of the TPPA.[6] It concluded, "far from automatically benefiting workers and consumers, the agreement will likely exacerbate Canada's reliance on low-employment intensity primary commodity exports". It also emphasizes that the potential for the TPP to open up opportunities in certain sectors must be assessed against likely increased imports. The TPPA deal not only removes tariffs, but also many other tools the Canadian government might reasonably wish to use to foster economic advancement and the growth of innovation-driven exports.

The Tufts University study uses the United Nations macroeconomic Global Policy Model and the trade modelling projections of the first of the two Peterson Institute of International Economics (PIIE). It uses much more realistic assumptions than the full employment and unchanging income distribution as well as trade and fiscal balances of the standard computable general equilibrium used in most studies. It suggests that Canada's economy would be 0.28% larger by 2025 after a decade of the TPP than it would have been without it.[7] The study argued that the models used by most other researchers, including the one at the Fraser Institute, are flawed because they look at changes to foreign trade, but assume away adverse macroeconomic consequences.

More optimistic claims about the TPP's economic impacts are largely based on economic modelling projections published by the PIIE.[8] These figures have been widely cited in many countries to justify TPPA approval and ratification. Updated estimates, released in January 2016, now claim US income gains of US$131 billion by 2030, or 0.5% of GDP, and a 9.1% increase in exports.[9]

The PIIE studies make heroic assumptions about growth, mainly by attributing relatively large, but dubious growth gains from 'non-trade measures'. According to the World Bank's 2016 report, which endorses the PIIE study, "For TPP members, only 15% of the GDP increase

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[5] https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/e-brief_236_0.pdf

[6] https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/05/Impact_of_TPP_Tariff_Removal.pdf

[7] Jeronim Capaldo and Alex Izurieta, with Jomo Kwame Sundaram, 'Trading Down: Unemployment, inequality, and other risks of the Trans-Pacific Partnership Agreement'. Global Development and Environment Institute, Tufts University, Medford, MA. This study, referred to as the Tufts paper, used the United Nations' macroeconomic Global Policy Model (GPM) and more realistic assumptions to generate more plausible projections of likely TPP impacts. To facilitate comparison with the 'counter-factual', despite serious reservations, it used the PIIE's projected estimates of the TPP's impact on exports. http://www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietaTPP.pdf

[8] Peter Petri, Michael Plummer and Fan Zhai, 'The Trans-Pacific Partnership and Asia-Pacific Integration: A Quantitative Assessment'. Policy Analyses in International Economics 98, 2012.

[9] See Peter Petri and Michael Plummer. 'The Economic Effects of the Trans-Pacific Partnership: New Estimates'. January 2016, Working Paper 16-2, PIIE.

would be due to tariff cuts, whereas cuts in NTMs, in goods and services, would account for 53% and 31% of the total increase in GDP, respectively", i.e. 84% *in toto*.

FDI is assumed to increase dramatically, which contributes a significant boost to economic growth in the PIIE projections, accounting for more than a quarter of projected US economic gains. The PIIE studies assume that investor income will be fully invested and will result in broad-based growth although neither assumption is supported by evidence or some other reasonable justification.

The 2016 PIIE study claimed huge benefits by assuming that the TPPA will catalyse large exports by lowering the fixed costs of entering foreign markets. Although the gains claimed have no analytical, empirical or historical bases, the report assumed that half the impact of the TPPA would be from cutting fixed trading costs, largely associated with non-tariff measures. If the modelling used conventional methods for estimating gains from trade, the results would have been much more modest, according to the US International Trade Commission (USITC) assessment. Hence, despite favourably reporting the PIIE authors' work, the World Bank acknowledges that "estimating the impact of deep and comprehensive trade agreements is still very much a work in progress" and the TPPA's "ultimate implications, however, remain unclear".

Threats to the Economy

As the government's own study shows, Canada is likely to gain mainly due to increased prospects of primary products, including agricultural and diary product exports to the new markets in Asia and the Pacific. But over reliance on the export of primary commodities also contributes to exchange-rate volatility and vulnerability as increases in commodity prices put upward pressure on the Canadian dollar. This volatility creates challenges for other exports, mainly manufacturing. For example, a strong Canadian dollar increased the cost of manufactured goods for foreign buyers during the commodity price boom of 2000s, contributing to a decrease in non-resource sector exports, and job losses. The Canadian economy lost 493,000 manufacturing jobs between 2001 and 2014.[10] The inevitable decline in commodity prices from the record highs of the 2000s has also had adverse effects on economic growth and public finances, as evident from the fiscal challenges the federal and several provincial governments are currently facing.[11]

Threats to Employment

Using the PIIE's first trade projections, the Tufts study finds that the TPP was projected to cause employment losses overall, with a total of 771,000 jobs lost with employment in Canada contracting by 58,000 jobs.[12] In the 2016 PIIE study, all displaced workers are absorbed costlessly by other sectors – again, by assumption. Yet, the 2016 PIIE paper acknowledges that manufacturing employment will increase more slowly because of the TPPA, and that some 53,700 more US jobs will be 'displaced' annually, supposedly only adding slightly to normal labour market 'churn'.

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[10]Statistics Canada

[11] 'Economic Mood Darkens as Rout Spreads beyond Oil Patch', *The Globe and Mail*, accessed 24 February 2016, http://www.theglobeandmail.com/report-on-business/economy/businessesoutside-oil-patch-now-feeling-sting-of-commodity-price-rout-boc/article28105709/;'UPDATE 3-Canada Government Warns of Big Budget Deficits, Growth Forecast Cut', Reuters, 22 February 2016, http://www.reuters.com/article/canada-budget-idUSL2N1610YX.

[12]Tufts University study, *op. cit.*

While production for export may grow, production for domestic markets is likely to decline in the face of import competition. But Canada's primary produce exports are projected to get a boost compared to manufacturing where Canada is likely to lose. Statistics Canada's value-added export data to 2011 (used for this data set) shows manufacturing exports generating 612,000 direct value-adding jobs (40% of all value-adding export jobs) compared to 61,000 jobs (4% of export jobs) generated by mining including oil and gas industries, and 68,000 by crop and animal production.[13] Thus, there will be adverse consequences for Canadian employment while more imported inputs for export-oriented production will reduce national linkages and multiplier effects compared to domestic production.

The extractive industries tend to pay higher wages on average, but with far fewer employment opportunities, the overall impact tends to exacerbate income inequality. Furthermore, businesses may become more competitive by cutting labour costs. Thus, the overall impact will probably **adversely** affect income distribution.

Real incomes for employees, especially the less skilled, are likely to be further depressed, as in recent decades, due to greater international competition following trade liberalization. Thus, the TPP will likely lead to higher inequality due to declining labour shares of national incomes, falling by 0.86% in the case of Canada, in turn, weakening domestic demand.[14]

Threats to Public Health

The TPPA will strengthen monopolistic Intellectual Property Rights (IPRs), well beyond the already onerous provisions of TRIPS, especially for big pharmaceutical companies. The TPPA will allow 'Big Pharma' longer monopolies on patented medicines, keep cheaper generics off the market for longer, and block the development and availability of 'similar' new medicines.

The treaty is likely to shut out cheaper generic manufacturers and prevent subsidy programs that keep drugs affordable in Canada. In Australia, which also subsidizes essential and life-saving drugs, the Australian Medical Association and the Public Health Association of Australia have raised concerns about the potential adverse impact of the TPPA on public health and access to medicines.[15]

Researchers at the University of Ottawa have raised concerns about the potential risks to public health due to rising costs of drugs, threats to expansion of public health insurance, and public health 'regulatory chill' due to investment protections through investor-state dispute settlement (ISDS). They are also concerned that some of the new barriers to public health regulation in the TPPA differ from those existing in Canada, requiring amendments to Canadian legislation. They also found adverse public health impacts due to changing income and employment dynamics, major social determinants of health.[16]

Public health experts have expressed concerns about potential adverse public health impacts of the TPPA in the May-June 2015 issue of the *Canadian Journal of Public Health*, calling for comprehensive health impact assessments to identify how the potentially serious health consequences of the TPPA and similar future international trade and investment agreements can

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[13] Statistics Canada Government of Canada, 'Contribution of Exports to Jobs, 2011', 30 July 2015, http://www.statcan.gc.ca/daily-quotidien/150730/t002b-eng.htm

[14] Tufts University study, *op. cit.*

[15] https://www.mja.com.au/journal/2015/202/4/what-doctors-should-know-about-trans-pacific-partnership-agreement

[16] http://www.globalhealthequity.ca/sites/default/files/imce/Policy%20Brief%20TPP%20and%20Health.pdf

be avoided, minimized or mitigated.[17]

Medecins Sans Frontieres said the agreement would go down in history as the worst-ever internationaleconomic agreement, causing "needless suffering and death" in developing countries.[18] It also fears that "Canadians will also face extended patent provisions and increased costs for medications. Pharmaceutical companies don't hesitate to protect their commercial interests, as demonstrated by a $500-million lawsuit by Eli Lilly against the Canadian government (and taxpayers) for the rejection of two drug patents and for allowing competitors to enter the market. The TPP would put even more of this type of leverage in the hands of pharmaceutical companies against the rights of governments".[19]

Medicines Australia has released a statement saying the outcome of the TPP is disappointing and "a missed opportunity to stimulate and grow the Australian biopharmaceutical industry".[20]

Advances the Interests of Large US Corporations

The collective drafting of the TPPA was 'assisted' by about seven hundred official advisers to the US Trade Representative (USTR), mostly from the US corporate sector. The TPPA will mainly advance certain politically influential US corporate interests by strengthening foreign investors' influence, intellectual property rights (IPRs) and financial liberalization while constraining instruments of national economic policy and the public interest. Not surprisingly then, the only US government study of likely TPPA impacts has been largely ignored in favour of the PIIE's.

Instead of promoting growth and employment through trade liberalization, the TPPA is mainly about imposing new rules favoured by large multinational corporations. For example, there are concerns that Article 25.8: Engagement with Interested Persons – "The Committee shall establish appropriate mechanisms to provide continuing opportunities for interested persons of the Parties to provide input on matters relevant to enhancing regulatory coherence" – can be interpreted to mean that foreign investors will be able to influence national legislation. While this chapter is not enforceable via state-state dispute settlement, there are equivalent provisions in other enforceable TPPA chapters.

The TPPA goes much further into shaping the role and functioning of governments than is needed for trade liberalization. There are concerns that its provisions will serve to further reduce the costs to, and increase the earnings of, transnational or multi-national businesses, with little commensurate gain for host countries. As they also undermine and compromise the 'integrity' of trade agreements, serious advocates of free trade and trade liberalization have sharply criticized the inclusion of such non-trade provisions in ostensible FTAs.[21]

In the US, the libertarian Cato Institute has denounced the TPPA as a tool of corporate lobbyists. Like many other recent bilateral and plurilateral economic agreements, the TPPA has

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[17] file:///C:/Users/Anis%20Chowdhury/Downloads/4896-17787-1-PB.pdf

[18] http://www.smh.com.au/national/health/transpacific-partnership-health-groups-say-tpp-will-cost-lives-20151005-gk229t.html

[19] http://www.theglobeandmail.com/opinion/why-the-tpp-trade-deal-is-a-threat-to-public-health/article25548162/

[20] https://medicinesaustralia.com.au/media-release/tpp-a-missed-opportunity-for-the-australian-biopharmaceutical-community/

[21] For example, see Jagdish Bhagwati. 'India should not toe the US line on the Trans-Pacific Partnership'. *Hindustan Times*, 28 September 2015. http://www.hindustantimes.com/analysis/india-should-not-toe-the-us-line-on-the-trans-pacific-partnership/story-LfURUi5Fpvmq5vDmxrH5FM.html; Jagdish Bhagwati. 'Dawn of a New System'. *Finance & Development*, 50 (4), December 2013.

little to do with liberalizing trade, but instead advances the interests of powerful foreign business interests.

Loss of Labour's Bargaining Power

Capital account liberalization affects the relative bargaining power of companies and workers, as capital is generally able to move across national borders more easily than labour. The threat of more easily relocating production abroad weakens workers' bargaining power. Hence, labour's share of income declines following various types of economic liberalization.

The impact of the loss of bargaining power may be more severe for workers in advanced economies than in emerging market economies for two reasons. Companies in advanced economies may be in a better position to make a credible threat to relocate abroad – where wages are lower.

Reconsider TPPA in Public Interest

More careful consideration through more informed public discussion of the TPPA's many provisions can only help. A new poll (released on February 4, 2016) by the Angus Reid Institute suggests about half of Canadians say they don't know enough about the Agreement to form an opinion about it.[22] On the issue of jobs in their own communities, 31% of Canadians see a negative impact, while roughly one-in-five (22%) see a positive one. After falling from an initial high of 41% in April 2015, public support for joining the TPP seems to have stabilized at less than one-in-three Canadians (32%).

Except in the special case of Vietnam, no other TPP country has majority public opinion favouring the TPP. According to a mid-2015 Pew Research Center survey[23], the strongest support for the TPP was in Vietnam, where 89% of the public backed it, while the weakest support was in Malaysia (38%). The greatest opposition was in Canada (31%).By contrast, the greatest support for deeper economic ties with Chinawas in Australia (50%) and South Korea (47%).

The peoples of the TPP countries are at a critical crossroads with the TPPA. They can insist on referenda after thorough public evaluation of its provisions' costs and benefits, in order to do the right thing. Otherwise, all TPP legislatures seem likely to approve and ratify the TPPA, including amending laws in line with TPPA requirements, condemning present and future generations to its consequences. The TPPA and its many implications for present as well as future generations need to be carefully evaluated before changing national legislation to meet TPPA commitments.

Costs and Risks of TPPA

Risks and costs have been insufficiently considered in extant evaluations of the TPP and its likely impacts. The CGE exercises do not provide the bases for seriously plausible cost-benefit assessments, as they often purport to. Ostensible net country gains projected also need to be discounted for such reasons. Yet, despite the reduced envisaged trade liberalization in the final TPPA compared to what was projected earlier, the PIIE's 2016 projections anticipate a greater growth impact from the TPPA than envisaged in their earlier projections with data until 2011.

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[22] http://angusreid.org/trans-pacific-partnership-feb-2016/

[23] Pew Research Center. 'Global Publics Back U.S. on Fighting ISIS, but Are Critical of Post-9/11 Torture'. 23 June 2015. http://www.pewglobal.org/2015/06/23/global-publics-back-u-s-on-fighting-isis-but-are-critical-of-post-911-torture/

Even unadjusted for costs and risks, the gains are small relative to the GDPs of TPP partner economies. Further, the CGE modelling exercises' projected trade benefits are expected to take a decade and a half to fully realize while the major risks and costs will be more immediate. Most projected trade benefits largely represent one-time gains, with no recurring addition to the growth rate, e.g., in terms of sustainably raising productivity, and thus do not raise the economies' growth rates.

The distribution of benefits and costs has not been much analysed in these exercises. If the gains mainly go to a few influential big corporations, with losses borne by many others, e.g., consumers paying for more expensive pharmaceutical medicines, etc., or workers experiencing downward wage and employment pressures, or national treasuries obliged to compensate foreign corporations, the TPPA could exacerbate inequalities at both national and international levels.

It is also unclear why and how extending the timeline by five years and starting a couple of years later in a low growth scenario results in such significant gains to allow delayed – and reduced – TPPA provisions to take effect. Also, it remains unclear how less growth gains due to the TPPA's reduced and delayed reduction of trade barriers, produces greater total gains. Also, one-time efficiency gains, due to the TPPA's reduction of 'deadweight losses', are now presented as cumulative gains raising the growth rate.

Also, it is not clear how one-time efficiency gains, due to the elimination of 'deadweight losses' owing to greater international specialization, appear to have increased by more than half simply by extending the period under consideration. Another USD22bn is due to new data, including higher NTBs in services, and USD7bn to TPPA-related non-preferential liberalization effects for growth, while the more conservative new NTB approach reduces growth gains by USD14bn.[24]

Even if a more comprehensive and balanced assessment of the costs and risks of TPPA provisions found the potential for improved net economic welfare for all in TPP countries, TPPA measures would not compensate losing participating economies and stakeholders. Needless to say, the TPPA does not include any mechanisms for international compensation.

Furthermore, the US International Trade Commission (USITC) analysis does not seem to consider public health risks and consumer welfare losses due to higher prices, and reduced access due to broader, stronger and longer patent and copyright protection – although higher prices for pharmaceutical medicines, software and other intellectual property will impose substantial costs on the public and governments.

Intellectual Property Rights (IPRs)

There is growing evidence that IPRs do little to promote research, and may actually impede or delay innovation. Contemporary IPR regimes not only impede innovation, but most certainly undermine public health and consumer welfare by limiting competition and raising prices.[25]

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[24] Petri and Plummer, 2016, *op. cit.*: Table B1

[25] Petra Moser. 'Patents and Innovation: Evidence from Economic History'. *Journal of Economic Perspectives*, 27 (1), Winter 2013: pp 23-44. Helpman, Elhanan, 1993. 'Innovation, Imitation, and Intellectual Property Rights'. *Econometrica* 61: 1247-1280, showed that not only would developing countries and the world as a whole lose from the international harmonization and strengthening of IPRs, the welfare of developed countries could fall as well. In 'Regulatory Reform and Innovation', the OECD (p. 33) noted "in a globalised economy, patenting may be becoming more of a competitive weapon than a stimulus to innovation". http://www.oecd.org/sti/inno/2102514.pdf. Williams, Heidi L., 2010. 'Intellectual Property Rights and Innovation: Evidence from the Human Genome'. NBER Working Paper No. 16213, July 2010, found "evidence that …IP led

The underlying basic research for most new medicines with genuine therapeutic impacts has been undertaken by public, not private, research,[26]contrary to the claims that IPRs are necessary to drive private investment in medicine R&D.

Higher pharmaceutical prices, due to stronger enforcement of patent rights, will adversely affect public health. Often, governments are not in a position to exercise their ostensible rights under the 'public health' exceptions to the TRIPS agreement. Furthermore, higher pharmaceutical prices will also test the financial sustainability of social security systems in most countries offering medical benefits. In countries not providing such benefits, medicines have to be bought by the patients themselves if they can afford them.

The TPPA provides stronger intellectual property protection than TRIPS requires (i.e., the TPPA is 'TRIPS+') in a number of other areas besides copyright including:

- Requiring patents on new uses of old inventions, e.g., finding that a herbicide can be used to kill another weed qualifies for getting a second patent.
- Requiring a patent to last for more than 20 years if the patent office takes too long to approve it, or the government health agency takes too long to check if the medicine is effective in treating the disease and is safe (e.g.,it does not cause problematic side effects). Patented medicines are much more expensive than their generic equivalents. For example, patented versions of medicines to treat AIDS cost around US$15,000 per patient per year, but a generic version only costs US$67 per patient per year. Thus, the TPPA will mean longer monopolies, allowing higher patented prices.
- Requiring originator agricultural chemicals (e.g., herbicides and pesticides) get a 10 year monopoly, even without a patent. Agricultural chemicals (e.g.. pesticides and fertilizers) make up 16.5% of total input costs for Canadian farmers,[27] and generic versions of agricultural chemicals are a third to half the price of their counterparts that are patented or have 'data (effectively market) exclusivity, but farmers in TPP countries will have to wait 10 years for such cheaper agricultural chemicals, even when they are not patented.
- Requiring medicines (including biologics) get a five year monopoly, even when there is no patent. Biologic medicines comprise an increasing share of the medicine market (in 2010, they accounted for a quarter of new medicines approved by the US government) and monopoly prices can cost more than US$500,000 per patient per year.

Investor-State Dispute Settlement (ISDS)

Most importantly, Chapter 9 grants aggrieved investors a private damages remedy directly against the host nation, and access to an international arbitration tribunal—rather than the respondent state's home courts—as the forum to resolve such claims. The ISDS provisions in trade and investment agreements have effectively created a powerful, privileged system of protections for foreign investors that often undermines domestic law and institutions.

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to reductions in subsequent scientific research and product development on the order of 20 to 30 percent. Taken together, these results suggest that … IP had persistent negative effects on subsequent innovation relative to a counterfactual … having always been in the public domain."

[26] See Giovanni Dosi and Joseph E. Stiglitz. 'The Role of Intellectual Property Rights in the Development Process, with Some Lessons from Developed Countries: An Introduction'. In Mario Cimoli, Giovanni Dosi, Keith E. Maskus, Ruth L. Okediji, Jerome H. Reichman, Joseph E. Stiglitz [eds]. *Intellectual Property Rights. Legal and Economic Challenges for Development*. Oxford University Press, New York, 2014: pp 3-4.

[27]http://www.agr.gc.ca/eng/industry-markets-and-trade/statistics-and-market-information/by-product-sector/crops/crops-market-information-canadian-industry/market-outlook-report/canadian-farm-fuel-and-fertilizer-prices-and-expenses-july-2013/?id=1389124331873#fig01desc

The ISDS provisions of TPPA will strengthen foreign investors' rights at the expense of local businesses and the public interest. Following binding private arbitration, the TPPA's ISDS provisions can oblige governments to compensate foreign investors for losses of expected profits due to changes in national policies and regulations. ISDS has been and can be invoked even when rules are non-discriminatory, or profits come from causing public harm.

ISDS in the TPPA will allow foreign corporations to sue governments for causing them losses due to legal or regulatory changes. ISDS cases are decided by extrajudicial tribunals composed of three corporate lawyers. Although ISDS has existed for decades, the TPPA would greatly broaden its scope and the bases for ISDS claims and the range and number of foreign investors who can sue TPP governments. Its impact will be exacerbated by the very broad coverage of the TPPA's Investment and Services chapter, which provides for a 'negative list' approach to exclusion. One major effect will be to constrain the policy and regulatory space for government initiative to promote desired investments and technological innovation.

As there is no cap on the amount of awards in the TPP, claims and awards can be huge, as foreign corporations can seek damages on future profits virtually indefinitely.

The system is dominated by unaccountable corporate lawyers. Lawyers acting as advocates in one case can be arbitrators in other cases. Recent ISDS decisions have involved significantly greater delegation of authority to arbitrators in interpreting and applying the agreements concerned, without any meaningful review or opportunity to appeal the arbitrators' decisions. There is no guarantee that tribunals will interpret treaty provisions in ways consistent with governments' understandings of what treaty obligations mean.(Article 9.25.3 (Governing Law) of the investment chapter provides the strongest ostensible safeguard, which is negated by the nature of the Commission itself: "A decision of the Commission on the interpretation of a provision of this Agreement under Article 27.2.2(f) (Functions of the Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision."[28]

ISDS also allows investors to challenge the actions of officials at any level of government – local, state, and federal – as well as conduct by any branch – executive, legislative and judicial. A measure entirely consistent with domestic law is no defence against liability. ISDS thus empowers private arbitrators to decide on cases that are essentially matters of domestic constitutional and administrative law, but are presented as treaty claims.

Instead of national judicial institutions, with ISDS, foreign investors will be able to ask a panel of appointed international arbitrators to determine 'proper' administrative, legislative and judicial conduct. Since many legal decisions involve matters of interpretation, it makes a great deal of difference to have non-national judges deciding on 'national' issues. It greatly helps foreign investors if they can bring their claims against a government before international arbitrators, and not domestic courts because:

- There is no provision for meaningful appeal.
- ISDS decision makers are not required to be independent and impartial with the high ethical standards expected of judges.

[28]According to statistics for disputes under US trade or investment treaties, there was a ruling of a 'fair and equitable treatment' (FET) violation 74% of the time when investors won, while FET was found to have been violated in 81% of the cases won by investors who alleged such violations. Even if ISDS tribunals actually take Annex 9-B into account, the wording in its last paragraph may not be sufficient to safeguard all regulatory actions that TPP governments may need to undertake. http://www.citizen.org/documents/MST-Memo.pdf

- If a domestic court issues a decision inconsistent with legislative intent, the legislature can correct it through domestic legislation, but it has no power to override an ISDS decision.
- Procedural rules and remedies are significantly different depending on whether an investor claim is through ISDS or domestic courts, with significant consequences for the TPP government's potential exposure to claims and liability.
- The law is not the same, even if it may look similar, implying that similar sounding legal texts may be interpreted very differently in different contexts.
- The threat of supranational adjudication has many, often complex legal and policy implications.

In recent years, ISDS has increasingly provided a means for investors to make money by speculating on lawsuits, winning huge awards and forcing foreigners to pay. Financiers have purchased corporations able to bring winnable ISDS claims to use such claims profitably. They have sometimes used 'shell companies' to pursue cases. Some hedge funds and private equity firms finance ISDS cases as third parties. Thus, ISDS has become the *raison d'etre* for such investments. Such 'third-party funding' of ISDS claims has been expanding quickly, according to a 'litigation finance' pioneer. If financing such claims was not worthwhile, the industry would not have boomed so quickly in recent years.

ISDS will inadvertently dilute constitutional protections, weaken the judiciary, and 'outsource' national legal systems to a system of private arbitration devoid of the essential checks and balances characteristic of most national judicial systems. In short, ISDS is an extreme, discriminatory and unnecessary form of supranational adjudication that will have undue negative effects on national law and institutions.

TPPA's Real Focus NOT Trade Liberalization

Despite being portrayed and advocated as a FTA, the TPPA is not mainly about 'free trade' or even 'freer trade'. The USA and many of its TPPA partners are already among the most open economies in the world. One important reason for the paltry trade gains from the TPPA is existing trade openness due to unilateral initiatives as well as earlier trade agreements. For example, Singapore's existing bilateral economic arrangements with the US go much further than the TPPA on many fronts in line with its own unique strategic considerations. In any case, the main trade constraints involve non-tariff barriers, such as ballooning US agricultural subsidies, only a few of which the TPPA addresses except in the case of Vietnam – for specific political historical reasons due to the legacy of the Vietnam War and its aftermath.

OECD countries, with more competent trade negotiating capacity, had delayed agreement on the TPPA at an earlier meeting in Honolulu in mid-2015 before the October deal in Atlanta. The delay was due to squabbling over how to manage trade in particular areas, reflecting vital interests and influential lobbies. Thus, ironically, the TPPA will actually protect and even advance interests contrary to free trade.

Instead of being the regional FTA it is often portrayed as, the TPPA seems to be "a managed trade regime that puts corporate interests first", as suggested by many critics such as economics Nobel laureate Joseph Stiglitz. Thus, the supposed benefits from trade liberalization constitute the thin edge of a wedge which will fundamentally challenge the national and public interest.

TPPA Politically Driven

It is no secret that the main US motive for the TPP has been to confront China. In President Obama's stirring words in his last State of the Union address, "With TPP, China does not set the rules in that region, we do". This has to be seen against the background of American efforts to check the rise of China ever since the collapse of the Soviet Union and the Russian economy during Boris Yeltsin's first presidential term. Broad support for the China-mooted Asian Infrastructure Investment Bank (AIIB) in 2015, even from traditional US allies, was a major embarrassment which the White House has been desperate to overcome.

TPP criticisms have spread among US politicians, with not only both presidential nominees, but also most presidential aspirants of both parties in the earlier party presidential primary rounds, joining the chorus of doubt and opposition. Even US Vice President Joe Biden stated recently that he saw "less than an even chance" that the TPP would be approved before the new U.S. president takes office in January 2017. However, the growing opposition to Donald Trump's candidacy within the Republican Party establishment suggests a growing likelihood of a determined White House-led bipartisan effort to push it through during the 'lame duck' period after the early November US elections.

Nevertheless, unless TPP country public opinion is reflected by national legislatures, it appears likely that the fates of the publics in TPP countries will be largely determined by Washington's strategic considerations and US corporate interests rather than the economic welfare and developmental potential of TPP member countries.

Hence, there is no need to rush through TPPA ratification. Instead, it is important to understand more carefully the national and public interest ramifications of the proposed mega-deal before making an informed decision.

We remind the Select Committee on International Trade of the Canadian House of Commons of the visionary promise upon which the multilateral World Trade Organization was founded:

> "to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand...while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development".(22)

There is little reason to believe that these aspirations will be achieved by the TPPA.

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