Canadian Union of Public Employees

Submission to the Standing Committee on International Trade

Trans-Pacific Partnership

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Introduction

The Canadian Union of Public Employees (CUPE) is Canada's largest union, with over 639,000 members across the country. CUPE represents workers in health care, emergency services, education, early learning and child care, municipalities, social services, libraries, utilities, transportation, airlines and more. Many CUPE members work in sectors that will be impacted by the Trans Pacific Partnership (TPP). We have investigated these potential impacts and have debated the issue of Canada's participation in the TPP at our last National Convention in Vancouver in November 2015.

As a social union, CUPE's goal is to protect and improve public services with the aim of creating a more equal and just society, where no one is left behind. With this in mind, we have to recommend that the Government of Canada not ratify the TPP.

Canada is a trading nation and international trade is vital to every level of our economy. CUPE is not opposed to trade, but we are opposed to bad trade agreements. Good trade agreements put the interests of people ahead of the interests of multinationals, promoting job creation and social development. Because trade between Canada and the other TPP countries is already 97% tariff free, it is difficult to believe that this agreement is about increasing trade. Rather, it leads one to assume another purpose. We suspect it is intended to enhance the powers and profits of corporations, to the detriment of workers, governments, taxpayers and all citizens. It is more an investment protection agreement than a “trade” agreement.

The TPP weakens our democracy

The Conservatives negotiated the TPP in secret, without input from the general public, experts in the various sectors that the TPP impacts or even opposition MPs. We believe the TPP was negotiated by the former government in a hurry so that it could be concluded during the last federal election campaign.

The TPP gives foreign multinationals the right to challenge, or even overturn, legislation adopted by democratically elected governments. With its expanded Investor-State Dispute Settlement (ISDS) mechanism, the TPP allows the wealthiest multinationals to sue Canada for hundreds of millions of dollars through a tribunal rife with conflicts of interest. That tribunal, presided over by arbitrators who have a financial interest in interpreting the provisions as broadly as possible, operates entirely outside of our domestic legal system. It cannot be accessed by either Canadian companies or the general public.

Canada has considerable experience with ISDS since the advent of the North American Free Trade Agreement (NAFTA) in 1994. The investor state system permits foreign investors to sue elected national governments for policy or legislation which the investors argue may limit their potential future profits. ISDS operates by means of secretive commercial arbitration panels with no recourse to appeal, rather than the domestic court system that the rest of us rely upon. Investor state arbitrators are empowered to award monetary penalties against participating governments. ISDS provides extra-judicial protections to foreign investors that are enjoyed by neither domestic investors nor regular citizens.

Canada is now the most-sued developed country under ISDS. There have been 35 investor-state claims against Canada under NAFTA, and the number continues to grow. So far, Canada has lost or settled six claims and has paid out more than $200 million in penalties. Canadians have also paid out tens of millions of dollars in legal fees defending these claims. Elected officials at the provincial level, and especially at the municipal level, are troubled by the possibility of exposing their jurisdictions to ISDS suits and arbitration panels.

At the same time, transnational corporations seem to have no hesitation about accessing ISDS. Environmental policies like our ban on the gasoline additive MMT and our ban on exports of hazardous waste; provincial water and timber protection policies (as in the Newfoundland Abitibi-Bowater case); and research and development requirements (as in the Exxon-Mobil case) have all been successfully challenged.

There are also a number of NAFTA ISDS challenges to a variety of measures that allegedly diminish the value of foreign investments. Examples of policies or decisions currently being challenged by foreign corporations include: Quebec's moratorium on fracking in the St. Lawrence valley; a moratorium on offshore wind projects on Lake Ontario; B.C. Hydro's policies on power pricing and a decision by the Federal Court of Appeal to deny two pharmaceutical patents to drug giant Eli Lilly on the basis they were not sufficiently innovative or useful. Cumulatively, foreign investors are seeking billions of dollars in new NAFTA damages from the Canadian government.

With the TPP, Canada runs the risk that we will encounter more negative investor-state experiences, as corporations from nine additional countries will be able to sue over our public policies. Canada also faces the possibility of being sued by Canadian corporations with a beachhead elsewhere, as is happening with Lone Pine Resources. This company operates almost exclusively in Canada but is incorporated in the tax haven of Delaware. Lone Pine is seeking over $250 million in compensation from the federal government, in their challenge of the moratorium on shale gas development in Quebec. That moratorium was enacted after considerable pressure was brought to bear by Quebec residents seeking to protect the St. Lawrence River. The river has considerable economic and tourism value, in addition to being a source of drinking water for millions of Quebec residents. Under the TPP, we can expect to face suits from corporations based in countries like Japan, Australia, Chile and Malaysia as well.

The TPP threatens public services

Canada is known the world over for its public services – our health care system, though it is not perfect, is still the envy of many nations. Likewise, our public education system and other core public services that help create the good quality of life the people who live in Canada have come to expect. Canadians know they can count on public services to be accountable, accessible, locally-controlled and a wise investment of tax dollars.

Of course, as funding for public services has been cut for the last three decades, underfunding has created a crisis that is putting enormous pressure on communities to privatize services and infrastructure regardless of the detrimental impact it will have on the quality of life and long-term viability of public services in our communities. In light of mounting evidence that privatization of public services is not in the public interest, signing a deal like the TPP is clearly a mistake. New federal infrastructure funds – including for water and wastewater facilities, public transit and green infrastructure projects – should be allocated to support communities maintaining public ownership and control of public services. Maintaining public ownership and control of services and infrastructure is essential to ensure democratic, equitable and thriving communities.

The TPP threatens public services in a number of ways. First of all, there are the ratchet and standstill clauses. The ratchet clause prevents backtracking once a service has been privatized or a standard eliminated, even if the outcome is catastrophic. Once any public service – whether it is owned and operated by the federal government or any other public entity (such as a municipality or a health board) – is privatized or opened up for competition, then that public entity loses its right to reconsider and bring the service back in house in the future. Under the standstill clause, a government cannot further regulate an industry, or contract-in a privatized service at the time the agreement was implemented. The TPP wants countries to freeze regulations in place and prevent future rulemaking for professional licensing and qualifications or technical standards. In other words, this is a provision that ensures that TPP commitments, once made, are locked-in based on their current domestic regime (known as a "standstill" mechanism) and therefore cannot become more restrictive.

Both clauses promote privatization and tie the hands of future governments. As the Government of Canada itself notes, these clauses include "enhanced obligations to secure current and future levels of liberalization in the service sector". They apply to laws, policies and regulations.

Further, the Government of Canada describes that such a negotiated process "Covers a broad range of services through a "negative list" approach, which means that all service sectors are covered by the Agreement, with the exception of the few sectors that are listed by a country. The negative list approach also ensures coverage for services as they evolve over time."

That means the TPP will bind Canada to offer up, for private corporations, services that we do not currently provide and which we may not even be able to imagine. If the TPP had been in place in the mid-20th century, we would have no national public health care system because private hospitals and private insurers would have demanded huge amounts of compensation for their perceived loss of future business. The next technological revolution – whatever it is – will never be able to be managed by a public entity, no matter how critical it is or how much it might help our national economy or our environment.

CUPE is concerned that signing onto the TPP would also make it costly to bring health care support services like laundry, IT or food services back into the public domain, even if the private contract has failed. But from a broader perspective, signing onto the TPP would also mean that it would be next to impossible to create a much-needed, public, national prescription drug program. We know that the added lengths of patent protection embedded in the intellectual property rights chapter of the TPP means that drug prices will increase by over $800 million per year, putting enormous pressure on provincial budgets and on the budgets of large employers that offer drug coverage. However, because private insurers already provide coverage for prescription drugs, an ISDS claim would make it very expensive for any government to bring this coverage into the public system.

The TPP increases inequality

While the promise of the TPP is that it will create wealth for all, there is no evidence to suggest that this promise will ever be fulfilled. Even a recent CD Howe Institute study – a think tank that has generally been supportive of international trade agreements – notes that there will be at best modest benefits for Canada.

More alarmingly, a recent Tufts University study "*Trading Down: Unemployment, Inequity and Other Risks of the TPP*" suggests that we stand to lose up to 58,000 jobs and that the TPP will also drive down wages. It is extraordinary that the current Canadian government has not yet commissioned a thorough economic or environmental assessment of the impact of proceeding with this deal. The government should immediately commission a comprehensive and independent public study of the likely economic, environmental, social and community impacts of such a wide-ranging and potentially significant agreement.

Given the lack of an independent, government-commissioned analysis, we rely on the expertise that has developed on the TPP. Nobel prize-winning economist Joseph Stiglitz, for one, has characterized the TPP as “the worst trade deal ever”. He recently appeared at a symposium on the TPP held at the University of Ottawa. The same symposium also heard from Tufts University researcher, Jeronim Capaldo, a co-author of *Trading Down*, published by the Tufts Globalization and Environment Institute. Beyond the loss of Canadian jobs, Dr. Capaldo’s study also found that by 2025, the TPP will result in greater income inequality in every one of the TPP countries as it transfers wealth upwards. The study further shows that the labour's share of GDP will shrink, entrenching inequalities even more.[1]

Workers in Canada will now be competing with workers in Vietnam and Malaysia who earn just a few dollars per day. And instead of improving working conditions and strengthening protections for these workers, the TPP maintains the status quo. Foreign companies will also be able to bid on Canadian public contracts and, in many cases, bring their own labour through labour mobility provisions enshrined in the agreement.

The TPP will encourage the use of cheap labour strategies by international corporations which choose to compete on that basis. By removing all remaining tariffs on imports and weakening the ability of government to regulate in the interest of domestic workers, the TPP will make it increasingly easy for corporations to move their operations to countries with cheaper labour rates and limited labour protections. It’s worth noting that the minimum wage in Vietnam is currently 60 cents per hour while it is $1.18 in Malaysia, and $1.27 in Peru.

Increasing restrictions on the ability for governments at all levels to lever local job creation from public investments in procurement of goods like transit vehicles or wind turbines further reduce our ability to create good manufacturing jobs in Canada. It is a major concern for CUPE that the TPP proposes the future inclusion of sub-national government procurement in a new negotiating round within three years of ratification.

As for jobs in new technology, we should heed the warnings of industry leaders like former Blackberry C.E.O. Jim Basillie and Highline C.E.O. Marcus Daniels, who have raised serious concerns about the impact of the intellectual property provisions of TPP for Canadian innovators. Basillie has been particularly pointed in predicting that the TPP will benefit U.S. technology companies at the expense of Canadian technology companies and our national productivity levels.

Conclusion

From our analysis of the TPP texts and secondary research, the TPP’s putative benefits are far from guaranteed. In fact, many thousands of Canadian jobs are at risk. This deal jeopardizes a national prescription drug plan and imperils this Liberal government’s commitments to fight climate change. But above all, the TPP will reduce the ability of elected officials to make the best decisions they can on subjects that range from food security, to the minimum wage, to the provision of public services because they will fear the investor-state dispute settlement process. For these and many other reasons, CUPE is calling on the Government of Canada to reject the TPP.

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[1] http://www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietaTPP.pdf