



## INTER PARES SUBMISSION TO THE HOUSE OF COMMONS STANDING COMMITTEE ON INTERNATIONAL TRADE

### INTRODUCTION

Inter Pares is a social justice organization working in Canada and around the world to support people's struggles for peace, justice, and equality. Inter Pares is encouraged by Canada's renewed leadership in the international landscape, and by the study being undertaken by the Standing Committee on International Trade (SCIT) to seek input from Canadians on the Trans-Pacific Partnership agreement (TPP). The consultation process being undertaken by the SCIT is in line with commitments made by the government of Canada to transparently engage Canadians before ratifying the TPP.<sup>1</sup> At the same time, the committee's remit is restricted to assess whether the TPP "is in the best interest of Canadians".<sup>2</sup>

Inter Pares believes that it is in the best interest of Canadians for our government to ensure its actions are consistent with its obligations both at home and abroad. In particular, the obligation that the government of Canada assumed with committing to the *Agenda for Sustainable Development*, which includes the goal of eradicating poverty by 2030 and "leaving no one behind."<sup>3</sup> Importantly, the Sustainable Development Goals (SDGs) are also "global in nature and universally applicable".<sup>4</sup> Achieving such an ambitious goal, domestically and internationally, will require a comprehensive and coordinated approach to Canada's foreign policies and actions, including those that pertain to trade and economic growth. Consequently, in our brief, we will comment on the impacts of the TPP on the Global South,<sup>5</sup> and Canada. We note however, that signatory countries in the South are considerably more vulnerable to the negative impacts we outline below.

Inter Pares urges the government of Canada to refrain from ratifying the TPP. Our call is informed by our experience on the ground through our development programs as well as concerns raised by our counterparts in the Global South.<sup>6</sup> <sup>7</sup> Measures in the TPP pertain more to facilitating private commercial gain than to facilitating true collaborative trade between nations. These measures include but are not limited to:

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<sup>1</sup> Minister of International Trade Mandate Letter. <http://pm.gc.ca/eng/minister-international-trade-mandate-letter>

<sup>2</sup> <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=e&Mode=1&Parl=42&Ses=1&DocId=8148299>

<sup>3</sup> Global Affairs Canada. *International Assistance Review: Discussion Paper*. <http://international.gc.ca/world-monde/development-developpement/iar-consultations-eai/document.aspx?lang=eng>

<sup>4</sup> United Nations. Transforming our world: the 2030 Agenda for Sustainable Development. <https://sustainabledevelopment.un.org/post2015/transformingourworld>

<sup>5</sup> In accordance to our equality and social justice values, Inter Pares refers to "developing countries" as the "Global South" and/or "South" and "developed countries" as the "Global North" and/or "North"

<sup>6</sup> Third World Network. Potential Human Rights Impacts of the TPP. <http://twn.my/title2/FTAs/General/TPPHumanRights.pdf>

<sup>7</sup> Focus on the Global South. Signing Away Sovereignty: How Investment Agreements Threaten Regulation of the Mining Industry

- Harmonizing regulations favoring lower standards to facilitate private commercial gain (financial, health and safety standards);<sup>8</sup>
- Reinforcing and extending intellectual property rights;<sup>9</sup> and
- Establishing tighter constraints on how governments choose to protect the environment, public health or create jobs.<sup>10</sup>

Predictable detrimental impacts on signatory Southern countries and Canada include:

- Threats to women's and human rights.
- Threats to Indigenous rights and livelihood.
- Threats to democratic sovereignty.
- Threats to efforts to address climate change.

These impacts are counterproductive to achieving the SDGs, and contrary to the principles and values that Canada has pledged to promote both: domestically and internationally.

## ISSUES

### INVESTOR STATE DISPUTE SETTLEMENT:

The Investor State Dispute Settlement (ISDS) mechanisms were established with the argument that a fair and neutral dispute settlement system was needed to protect corporations' investments from perceived bias and corruption of legal and judicial systems in countries with weak states. The experience of the last two decades, however, is that ISDS enabled the rise of a powerful international regime that serves to protect private commercial interests of mostly Northern based corporations, privileging them over local and international public interests. Despite all the evidence presented below that ISDS is not the unbiased "last resort" system that it purported to be, there is no indication that ISDS under the TPP will be any different from other trade deals. Under the TPP, there is neither a code of conduct for ISDS, nor a counterclaim mechanism. In fact, arguably under the TPP, ISDS has the potential to exacerbate harmful impacts, as it reinforces measures in other chapters of the agreement that aim to give corporations a tighter grip on states' ability to regulate via policies and laws covering finance, health care, environment, intellectual property and labour practices.

### **Profitable Arbitration and Litigation**

The international investment arbitration system is dominated by a small group of law firms and elite arbitrators based in the Global North. In fact, three top law firms claim to have been involved in 130 investment treaty cases in 2011 alone.<sup>11</sup> Only 15 arbitrators from Europe, US and Canada decided on 55% of all known investment-treaty disputes. The ISDS tribunal is comprised of three arbitrators: one appointed by the corporation, a second one by the state, and the third by both parties. The pool of lawyers from which these arbitrators are chosen is small. This group includes lawyers that work also as corporate counsel, which

<sup>8</sup> Trade Justice Network. TPP. <http://tradejustice.ca/tpp/>

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Profiting from Injustice <http://corporateurope.org/sites/default/files/publications/profitting-from-injustice.pdf>

allows for an implicit incentive for arbitrators to rule in favour of corporations that can potentially appoint them as counsel or arbitrator in another case.<sup>12</sup> Thus, this system has become a “revolving door” that allows lawyers to interchangeably act as counsel in one case, and as arbitrators in another, with all the inherent conflict of interest involved.

Not surprisingly, in the last two decades, the ISDS cases have significantly increased from 38 cases in 1996 (registered at ICSID, the World Bank’s body for administering such disputes) to 450 known investor-state cases in 2011.<sup>13</sup> The amount of money involved has also expanded dramatically. In 2009-2010, 151 investment arbitration cases involved corporations demanding from states at least US\$100 million per case.<sup>14</sup> While the justification for ISDS was a perceived need for a “fair” alternative to “weak” judicial systems, it is now even affecting countries with strong judicial systems like Canada. In fact, Canada is currently the most-sued developed country with claims under the North American Free Trade Agreement (NAFTA)<sup>15</sup> adding up to \$6 billion<sup>16</sup>.

### ***Cost Burden to the Global South: Specific examples***

- The costs associated with an ISDS suit can be very onerous for countries in the Global South, even if the ruling results in their favour. For example, the Philippine government spent US\$58 million to successfully defend two cases against German airport operator Fraport; money that would have been enough to pay the salaries of 12,500 teachers for one year, or vaccinate 3.8 million children against diseases such as tuberculosis, diphtheria, tetanus and polio.<sup>17</sup>
- TWC, a U.S. investment management corporation that jointly owned one of the Dominican Republic’s three electricity distribution firms, filed a \$606 million claim against the country under the Central America Free Trade Agreement (CAFTA) in 2007. TWC argued that the state’s failure to raise electricity rates - despite the fact that the country was experiencing a nationwide energy crisis - constituted an indirect expropriation of its investment. The government of the Dominican Republic decided to pay \$26.5 million to the foreign firm to drop the case, recognizing that it would be less of a drain on the national treasury than continuing to pay legal fees to fight it<sup>18</sup>.

### **IDSD and Human Rights**

Under the investment chapter, ISDS is one of the mechanisms through which the terms of the TPP are expected to be enforced. As stated above, ISDS gives investors a regime under which to sue governments for unlimited monetary compensation for failure to comply with the TPP. In other trade deals, this mechanism has created a “chilling effect”, as countries

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<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Trade Justice Network. TPP. <http://tradejustice.ca/tpp/>

<sup>16</sup> Stanford, Jim. (2015). Primer on Investor-State Dispute Settlement. Retrieved from: <http://www.progressive-economics.ca/2015/03/16/primer-on-investor-state-dispute-settlement/>

<sup>17</sup> Focus on the Global South. Signing Away Sovereignty: How Investment Agreements Threaten Regulation of the Mining Industry. Retrieved from: <http://focusweb.org/sites/www.focusweb.org/files/Signing%20away%20sovereignty.pdf>

<sup>18</sup> ISDS Corporate Attacks. Corporate Attacks: Essential Services Case Study: Electricity. Retrieved from: [http://media.wix.com/ugd/7c0358\\_cfa4e53ec74c4cccb7f791ea2d26e59f.pdf](http://media.wix.com/ugd/7c0358_cfa4e53ec74c4cccb7f791ea2d26e59f.pdf)

attempt to avoid complex and expensive law suits and the reputational damage that ensues after fighting these cases. This fear can significantly influence how countries in the Global South make decisions regarding human rights protections in their domestic policies and legislation<sup>19</sup>.

There are four principles that corporations have consistently used to sue states:<sup>20</sup>

- I. National treatment: foreign investors must be treated as well as (or better than) national investors.<sup>21</sup>
- II. Fair and equitable treatment: although open to different interpretations and applications, it has often been used to protect the “legitimate expectations” of foreign investors, which according to the interpretation provided by many tribunals, can include the expectation that host countries’ national laws and policies that affect their profits, can never change.<sup>22</sup>
- III. Most favored nation: allows investors to identify the provisions they find most favorable in all the investment agreements signed by the host country (not only the one signed with their home country), thereby creating a “super treaty” through which they can sue.<sup>23</sup>
- IV. “Indirect” or “regulatory” expropriation: allows investors to claim large financial compensation for any action taken by the state, including those to pursue public welfare objectives, if such measures negatively affect future profits expected by the company. In the past, this has included fines for contamination, or other lawful measures aimed to at protecting the public’s wellbeing.<sup>24</sup>

Unfortunately, there are no principles or chapters dedicated to prescribe the responsibilities of corporations when investing in foreign countries. Thus, given the encompassing nature of the protections these corporations enjoy, countries of the Global South are less likely to initiate progressive policies without strong assurances and confidence that new policies will not likely expose them to potential litigation through ISDS. In practice, it is very difficult for developing countries to assess and make confident decisions about the future implications of current scenarios, as their financial and human resources capacity is significantly lower than countries in the North.<sup>25</sup> Such coercive systems have affected Southern countries’ capability to enact laws that protect their citizens’ public health and environment. As presented below however, when it comes to protecting human rights, such robust enforcement mechanisms do not exist in the TPP or other investment agreements.

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<sup>19</sup> Ibid

<sup>20</sup> Canadian Council for International Co-operation. Whose rights are we protecting? Ensuring the primacy of human rights over investor protections in the international legal regime. [http://www.ccic.ca/\\_files/en/what\\_we\\_do/2015\\_12\\_Whose%20rights%20are%20we%20protecting-December%202015.pdf](http://www.ccic.ca/_files/en/what_we_do/2015_12_Whose%20rights%20are%20we%20protecting-December%202015.pdf)

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Ibid

## ***Human Rights and Environmental Violations in the Global South Enabled by ISDS: Specific examples***

- An American water company called Azurix Corp. - an Enron subsidiary - filed a claim against Argentina under the U.S.-Argentina Bilateral Investment Agreement, over a dispute related to a water services contract. In 1999, the company won a 30-year concession to provide water services in the province of Buenos Aires. But public protests against the company took place between 1999 and 2001 due to water contamination, over-billing and a series of water outages. Azurix blamed the Argentinian government for the contamination, while Argentina argued that Azurix had a contractual responsibility to ensure clean drinking water.<sup>26</sup> In the end, the Tribunal determined that Argentina violated Azurix's right to "fair and equitable treatment" (included in the Investment chapter of the TPP). The tribunal stated that *the legitimacy and/or intent of the measure to protect the public was irrelevant*; instead what was relevant was whether the measure affected the investor's ability to make expected profits. It ordered the government of Argentina to pay the Enron subsidiary \$165 million plus interest, in addition to covering the majority of the tribunal's costs.<sup>27</sup>
  
- After Chevron heavily polluted the Amazon rainforest, 30,000 Amazonian Indigenous peoples successfully sued Chevron in Ecuador's courts, which gave the plaintiff an US\$18 billion award. After having lost on the merits in Ecuador and U.S. courts and after 18 years of efforts to stall judgment, Chevron turned to ISDS to help the company avoid paying to clean up the contamination. Chevron is currently before ISDS in efforts to have the \$18 billion judgement awarded by Ecuador's court system altered or suspended.<sup>28</sup>
  
- The following case is from the report "*Whose rights are we protecting? Ensuring the primacy of human rights over investor protections in the international legal regime*" prepared by the Canadian Council for International Co-operation, on whose editorial committee Inter Pares played an active role:

"A Spanish company called Tecmed sued Mexico in 1998 under the Spain-Mexico BIT after the government refused to relicense an operating waste treatment plant. [...] In 1996, the company had been issued a license to operate a landfill. In 1998, the municipal government decided to close the landfill, citing environmental protection and public health concerns, [as well as] criminal charges raised by [local human rights activists] for "environmental crimes". Tecmed argued that "not renewing the license constitute[d] expropriation and on this premise, sought damages and compensation". The tribunal ruled that Mexico had breached the "fair and equitable treatment" obligation because it failed to provide Tecmed with a "treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the

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<sup>26</sup> Peru-U.S. "Free Trade Agreement" Would Help Lock In Failed Social Security Privatization in Peru [http://www.citizen.org/documents/ssprivatizationreport\\_0607.pdf](http://www.citizen.org/documents/ssprivatizationreport_0607.pdf)

<sup>27</sup> Challenging Corporate Investor Rule. <http://www.ips-dc.org/wp-content/uploads/2012/01/070430-challengingcorporateinvestorrule.pdf>

<sup>28</sup> Will Chevron Case Take Down Trade Pact 'Investor-State' Enforcement System? <http://www.citizen.org/documents/gtw-chevtron-release.pdf>

investment". In short, the tribunal considered that it was legitimate for the investor to expect that Mexico would never change its policies."<sup>29</sup>

- After a joint review panel rejected Bilcon's application for expanding its extractive activities in Nova Scotia because of community opposition, on March 2015 a NAFTA tribunal decided that Canada had breached the national treatment principle.<sup>30</sup> Canada argued in court that the treatment of Bilcon (an American company) should be compared to the treatment of Canadian companies "in like circumstances", i.e. having "to deal with significant opposition within a local community". But the tribunal rejected Canada's argument, stating that the tribunal did not concur that the analysis of the case should be limited "to such a narrow range of possible comparators".<sup>31</sup> This finding has been qualified as "a remarkable step backwards" for environmental protection. Bilcon is now seeking over \$300 million in damages from the federal government (i.e. tax payers' monies).<sup>32</sup>

## IMPACT ON PUBLIC HEALTH AND ACCESS TO MEDICINES:

The intellectual property chapter of the TPP is one of the chapters most detrimental to achieving the SDGs. Under the TPP, countries must grant additional 20-year patents for any modifications made to existing medicines, including new use, different dosage, and new processes or applications.<sup>33</sup> Similarly, for medicines under the drug class *biologics*, which are not normally patented<sup>34</sup>, the TPP requires states to give pharmaceutical companies data exclusivity that protects clinical trials data by giving them additional periods of data control (i.e. equivalent to a patent).<sup>35</sup> This class of drugs is at the center of development of vaccines, new cancer treatments, and potential Ebola treatments.<sup>36</sup> These patent extensions and data exclusivity periods significantly increase the costs of medicine, and prolong and diminish access to generic drugs for those who are most vulnerable. The implications for Canada are two-fold: 1) the TPP compromises its ability to negotiate cost-savings measures for prescription drug purchasing and provision for Canadians,<sup>37</sup> and 2) it counteracts the government of Canada investments on global health.<sup>38</sup>

It is estimated that combined with the Canada Europe Trade Agreement, the TPP's patent term extensions will signify a potential cost of over \$800 million annually in raised costs to

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<sup>29</sup> Canadian Council for International Co-operation. *Whose rights are we protecting? Ensuring the primacy of human rights over investor protections in the international legal regime.*

[http://www.ccic.ca/\\_files/en/what\\_we\\_do/2015\\_12\\_Whose%20rights%20are%20we%20protecting-December%202015.pdf](http://www.ccic.ca/_files/en/what_we_do/2015_12_Whose%20rights%20are%20we%20protecting-December%202015.pdf)

<sup>30</sup> Ibid

<sup>31</sup> Permanent Court of Arbitration (PCA). Award on jurisdiction and liability, Clayton/Bilcon v. Canada. (2015, par. 690).

<http://www.italaw.com/sites/default/files/casedocuments/italaw4212.pdf>

<sup>32</sup> <http://tradejustice.ca/tpp/>

<sup>33</sup> Médecins Sans Frontières Canada. *MSF Statement to Canada's Standing Committee on International Trade on the Trans-Pacific Partnership.* <http://www.msf.ca/en/article/msf-statement-to-canada-s-standing-committee-on-international-trade-on-the-trans-pacific>

<sup>34</sup> A *biologic* is manufactured in a living system such as a microorganism, or plant or animal cells, which technically does not involve the intellectual 'innovation' or property that other drugs do.

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Canadian Health Coalition. The Trans-Pacific Partnership (TPP) and Public Health Care. <http://healthcoalition.ca/wp-content/uploads/2015/10/One-page-background-TPP.pdf>

<sup>38</sup> Médecins Sans Frontières Canada. *MSF Statement to Canada's Standing Committee on International Trade on the Trans-Pacific Partnership.* <http://www.msf.ca/en/article/msf-statement-to-canada-s-standing-committee-on-international-trade-on-the-trans-pacific>

Canadians.<sup>39</sup> Currently, 1 in 10 Canadians do not fill their prescriptions due to the cost; a further increase in costs will be detrimental for the health of Canadians. Ratifying the TPP will make it impossible for Canada to negotiate a universal drug plan in the future,<sup>40</sup> limiting Canada's ability to explore ways to serve those who are most in need of accessing medicines at a low or no cost.

On the other hand, signatory countries in the South with limited budgets will not be able to purchase medicines for their citizens.<sup>41</sup> This can have disastrous public health impacts. For instance, a study of Vietnam, the poorest country of the TPP, found that an estimated 45,000 people could stop gaining access to HIV medicines due to the higher costs that would result from the implementation of the TPP. Currently, 68% of eligible HIV patients receive therapy; however post-TPP only 30% would be able to retain access to treatment.<sup>42</sup>

Jason Nickerson, Humanitarian Affairs Advisor for Médecins Sans Frontières (MSF) stated: "If enacted in its current form, the TPP will go down in history as the worst-ever trade agreement for access to medicines for developing countries". Ratifying the TPP will undermine Canada's past and future contributions to global health. Canada has provided more than \$1 billion to improve access to affordable vaccines in developing countries, as well as recently committed \$785 million to the Global Fund to Fight AIDS, Tuberculosis and Malaria.<sup>43</sup> These contributions are in accordance with Canada's commitments to achieve the SDGs. Ratifying the TPP however, will significantly decrease the impact of these efforts on behalf of the most vulnerable, and instead will enhance the profits of already highly profitable pharmaceutical companies.

## THREAT TO DEMOCRACY: CERTIFICATION PROCESS

All TPP countries will be required to go through a certification process conducted by the U.S. Although the certification process is not in the text of the TPP, it is a key element of U.S. trade agreement implementation.<sup>44</sup> Under U.S. law, the President must determine whether the agreement's parties have taken measures to enable the agreement to take effect.<sup>45</sup> This

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<sup>39</sup> Canadian Labour Congress. *Bad Medicine: Canadians will pay more for drugs and lose privacy under TPP*. <http://canadianlabour.ca/news/news-archive/bad-medicine-canadians-will-pay-more-drugs-and-lose-privacy-under-tpp>

<sup>40</sup> Ibid

<sup>41</sup> Canadian Health Coalition. *The Trans-Pacific Partnership (TPP) and Public Health Care*. <http://healthcoalition.ca/wp-content/uploads/2015/10/One-page-backgrounder-TPP.pdf>

<sup>42</sup> Moir, Hazel V. J. and Tenni, Brigitte and Gleeson, Deborah Helen and Lopert, Ruth. *Assessing the Impact of Alternative Patent Systems on the Cost of Health Care: The TPPA and HIV Treatment in Vietnam* (November 27, 2014). Asia-Pacific Innovation Conference, University of Technology Sydney, 27-29 November 2014. <http://poseidon01.ssrn.com/delivery.php?ID=835027069103090093007083004103118010029012059080064045010093002077001089069090078073031034034120015014035095096011074090089004010046014046085094119031028126104100068034012028101000115114104068002125031070024014029025081113027126097001105099118020089065&EX T=pdf>

<sup>43</sup> Médecins Sans Frontières Canada. *MSF Statement to Canada's Standing Committee on International Trade on the Trans-Pacific Partnership*. <http://www.msf.ca/en/article/msf-statement-to-canada-s-standing-committee-on-international-trade-on-the-trans-pacific>

<sup>44</sup> Jane Kelsey & Sanya Reid Smith. *Q&A On The Us Legal Requirement for 'Certification' Of Trade Partners' Compliance Before An Agreement Like The TPPA Goes Into Effect*. <http://tpnncertification.org/wp-content/uploads/2014/08/Certification-memorandum.pdf>

<sup>45</sup> Ibid

determination process can involve extensive review of the parties' legislature, carried out by U.S. government agencies and departments such as the State department, Commerce, Agriculture, Treasury, and the U.S. Trade Representative. If the President does not certify the implementation, the U.S. cannot ratify the treaty, and thus it would not come into effect.<sup>46</sup>

This certification requirement has in the past provided bargaining power to the U.S. to make specific demands of signatory countries for concessions never contemplated in the agreement itself. For example, as a CAFTA certification requirement, the U.S. asked and obtained from Guatemala three additional years of data exclusivity on medicines.<sup>47</sup> This extension ensured higher profits for American pharmaceutical companies at the expense of diminished access for Guatemalans to affordable generic medicines.

The certification process can go beyond asking for additional trade benefits. It can also require parties to repeal or re-draft legislation to fit U.S. demands. The demands may not even come from a State department or agency. For instance, Chevron lobbied the U.S. government to demand that Dominican Republic repeal its environmental protection legislation as part of their trade agreement certification process. Although the legislation did not contravene the trade agreement's text, the Dominican Republic put aside its environmental concerns and repealed its legislation to obtain the needed certification for the trade agreement to come into effect.

While more vulnerable to such coercive tactics, countries in the South are not the only ones that have been affected. In 2004, under the Australia U.S. Free Trade Agreement (AUSFA), the U.S. demanded Australia amend its copyright legislation to meet the U.S. interpretation of compliance and other commitments not included in the agreement text. The demand was met by rushing the *Copyright Legislation Amendment Bill* through the Australian parliament in an emergency over-night session. The following excerpt from Australia's Parliamentary Library describes the process and the impact on the Australian legislation:

*"This Bill, like the USFTAI Act, makes significant changes to Australia's copyright regime without rigorous public consultation with stakeholders or experts. As a result of both pieces of legislation, Australia can expect uncertainty in copyright law, at least until courts develop interpretations that make sense of the American law which have been grafted on to the Australian system. As Australia lacks much of America's legal context such as a constitutional Bill of Rights, the doctrine of fair use, or the narrower test of originality in copyright law these American elements could produce quite different results in Australia to those in the United States."*<sup>48</sup>

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<sup>46</sup> Michael Geist. The Star. *When it comes to the TPP, U.S. demands could trump Canadian desires: Geist*. <https://www.thestar.com/business/2016/03/21/when-it-comes-to-the-tpp-us-demands-could-trump-canadian-desires-geist.html>

<sup>47</sup> Jane Kelsey & Sanya Reid Smith. *Q&A On The Us Legal Requirement for 'Certification' Of Trade Partners' Compliance Before An Agreement Like The TPPA Goes Into Effect*. <http://tppnocertification.org/wp-content/uploads/2014/08/Certification-memorandum.pdf>

<sup>48</sup> <http://tppnocertification.org/australias-experience/>



The Law Society of Australia described the resulting system as “confusing, overlapping, incoherent and in some cases redundant”.<sup>49</sup> Thus, pressure to comply with the U.S. certification before implementing the trade agreement completely undermined the Australian democratic process, resulting in a system that neither adequately functions in their legislative system nor serves the best interests of Australians.

Any process that directly or indirectly coerces sovereign nations to modify or repeal national legislation is an infringement of democratic sovereignty. Countries in the South are more vulnerable to such pressures. However, all sovereign nations that agree to comply with such process put their democratic autonomy at risk. This is a reality that was articulated in the *Open Letter to the Political Leaders of the Countries Negotiating the Trans - Pacific Partnership Agreement*<sup>50</sup> to former Canada’s Trade Minister Ed Fast and his counterparts in other countries. The letter was sent on behalf of ministers, prominent former parliamentarians, current leaders of political parties, spokespersons for trade, and members of committees with responsibility for the TPP from Australia, Canada, Japan, Malaysia, and New Zealand. The following is an excerpt from the letter, describing the concerns related to the certification process:

*“If applied to the TPP, this practice [certification] would infringe on the sovereignty of our governments to determine the meaning and extent of the obligations they have agreed to and adopted under the TPP; it would impugn the constitutional authority and responsibility of legislatures and lawmakers; and it would constitute interference by a foreign government in the sovereignty of our countries.”<sup>51</sup>*

Although certification is not the only threat to democracy posed by the TPP, its use is arbitrary, and at the discretion and control of one powerful treaty signatory.

## **CONCLUSION AND RECOMMENDATION:**

This brief has presented some of our greatest concerns regarding Canada’s potential ratification of the TPP:

- Investor State Dispute Settlement
- Impact on public health and access to medicines
- Threat to democracy

Throughout this document evidence has been presented to describe how Canada’s ratification of the TPP would contradict its domestic and international commitments to fulfill the *2030 Agenda* and promote democracy across the globe.

Canada already has trade deals or low trade tariffs with all TPP parties,<sup>52</sup> thus the TPP’s economic benefit is doubtful. On the other hand, Canada recently announced an investment of \$5 billion<sup>53</sup> in global assistance to achieve the SDGs. Ratifying the TPP can significantly

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<sup>49</sup> Ibid

<sup>50</sup> <http://canadians.org/sites/default/files/Trade/letter-legislators-TPP-0515.pdf>

<sup>51</sup> <http://canadians.org/sites/default/files/Trade/letter-legislators-TPP-0515.pdf>

<sup>52</sup> <http://tradejustice.ca/tpp/>

<sup>53</sup> <http://www.budget.gc.ca/2016/docs/plan/ch6-en.html>

reduce the effectiveness per dollar that those contributions could have to assist signatory countries in the South in achieving the SDGs. Thus, given the TPP's detrimental impact on democracy, human rights, women's rights, Indigenous rights, and efforts to address climate change while providing little to no added benefit to the Canadian economy, the following questions arise: Is it worth it? and Is it consistent with the domestic and international commitments made by the government of Canada of "leaving no one behind"?

The answer to these questions is a resounding "No".

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## INTER PARES

*Inter Pares means **among equals**. For 40 years, we have worked closely with courageous activists and over a hundred inspiring organizations throughout the world to build peace, diminish poverty, advance justice and globalize equality. We currently have programs in over 20 countries, including Canada, focusing on six global issues: food sovereignty, women's equality, peace and democracy, economic justice, health, and migration.*

*Inter Pares is dedicated to empowering people to assert their own agency. By building relationships with, and supporting the work of civil society organizations, we help communities confront injustice, implement locally-adapted solutions, spark innovative initiatives and occupy the democratic space that belongs to them.*

*We are also committed to engaging Canadians in the struggles for justice and equality that people face around the world. We have over 7,000 committed donors across Canada and raise \$1.5 million from the public annually. Inter Pares is an active member of the Canadian Council for International Cooperation (CCIC).*

*Inter Pares' experience is that the relationship between Global Affairs Canada and Canadian CSOs can be mutually beneficial, where both parties are open to debate, dissenting opinion and discussion on issues of mutual concern. The actions of CSOs must continue to be autonomous of government though there can be many areas of complementarity and collaboration.*

### **Contacts:**

**Johanna Jimenez-Pardo, Program Manager**

**Jean Symes, Program Manager**

**Inter Pares**

**221 Laurier Ave. East**

**Ottawa, ON K1N 6P1**

**Tel: 613-563-4801**