

Unifor Submission to the Standing Committee on International Trade (CIIT)

Trans-Pacific Partnership (TPP)
Public Consultation

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Introduction

Unifor is one of Canada's largest labour unions, representing 310,000 members in both public and private sectors. Unifor members perform work in nearly all major industries of the economy, including transportation, communications, manufacturing, energy and services.

Throughout the course of its study on the Trans-Pacific Partnership, the Standing Committee on International Trade (CIIT) has, on various occasions, solicited the views of Unifor. In fact, Unifor has formally delivered four oral presentations to the committee on the dates of March 8th, May 12th, September 26th and September 29th. Additionally, Unifor National President Jerry Dias was invited to share the union's views at a public town hall meeting hosted by Global Affairs Canada at the University of Toronto on June 15th. Unifor members, across Canada, also participated in regional consultations held by both the CIIT and Global Affairs Canada.

The extensive public consultations, spanning nearly 12 months, was a welcome change to what is typically a less engaging and consultative approach to trade agreements and trade policy. Not only did this consultation provide an opportunity for direct, democratic civil engagement it enabled a deeper, collective understanding of the impacts of trade policy and why it matters to Canada's economy and social development. Such an approach should form the basis of future civil society engagements, and offers a stark contrast to the federal government's approach to the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) which has not been subject to the same degree of public scrutiny, despite similar policy features.

Unifor appreciates the opportunities that have been provided by the CIIT to speak on the TPP over the past year, and also welcomes this last opportunity to submit our final, supplementary views. The recent executive order signed by US President Donald Trump that formally withdrew the United States from the TPP suggests that the trade pact cannot be ratified as negotiated, based on the agreement's stated ratification procedure (i.e. the agreement must be ratified by at least six of the original signatory nations, representing at least 85% of total GDP among the group). This point was further emphasized by Foreign Affairs Minister Chrystia Freeland in public comments made on January 24th, where she stated: "the TPP as a deal cannot happen without the United States being a party to it."¹

Despite the fact that Canada may not proceed with ratification of the TPP (although that has not been made explicit by the Minister or another government representative) the final report of the CIIT will still provide an invaluable resource for future analysis and discussions that should guide the federal government's interventions on trade (of which there are currently many). And we are pleased to further contribute to it.

¹ <http://www.reuters.com/article/us-usa-trump-trade-canada-idUSKBN1582P3>

Unifor criticisms

The union's criticism of the TPP has been well publicized and documented through our interventions with this Committee. It is our view that the proposed trade agreement includes a series of policy reformations that would be detrimental to working people and the economy.

In our depositions, Unifor representatives identified three overarching concerns with the agreement, including the implementation of investor-state dispute settlement (ISDS) mechanisms; a "negative-list" approach that opens markets to foreign investors and all service suppliers; as well as major patent reforms and new digital policy rules.

Further to these general concerns, Unifor developed a set of industry-specific criticisms, outlining the challenges posed to Canadian workers (across a range of Unifor-represented sectors) resulting from various TPP provisions. Unifor has already identified to the committee a list of specific concerns as related to the agreement's potential impact on the auto and auto parts sector (see the intervention from Jerry Dias, March 8th and Dino Chiodo, May 12th). But we have also produced additional analyses on the TPP's impact across broader range of economic sectors in Canada, information that (to this point) has not been formally submitted to the Committee.

Herein, we are submitting to the Committee a compilation of brief sector reports, as a supplement to what we have submitted to the record so far.

Aerospace Sector

Unifor represents more than 10,000 workers who develop and manufacture aircraft and aircraft components for Bombardier, Boeing and other prominent OEMS in the sector, and are also engaged in the production of satellites and robotics for space exploration and have assisted in developing robotics now being used for neuro surgery.

Canada's aerospace industry contributed more than \$28 billion to Canada's GDP in 2015 and directly employed almost 90,000 people in high paying, high skilled jobs, with an additional 120,000 jobs supported right across the country². The aerospace industry is a leading investor in research and development and was responsible for 30 per cent of the manufacturing sector's R&D spending in 2015. A portion of Canada's high tech innovation (including neuroscience) can be traced back to R&D spending in the aerospace sector. This is particularly important as the government continues to focus on good jobs and innovation as leading drivers of prosperity and economic growth.

Canada's Industrial and Regional Benefits (or "offsets") Policy has played an important role in the development of our Aerospace industry. This policy requires companies that have won

² https://www.ic.gc.ca/eic/site/ad-ad.nsf/eng/h_ad03964.html

government contracts in defense and security, including with the Canadian Coast Guard, to place an equal amount of business activity into Canada's economy³.

Under the TPP, offsets are considered a barrier to free trade and under Chapter 15 (Article 15.4(6)) governments are generally prohibited using them. However, the TPP allows developing countries, including Malaysia and Vietnam, transitional periods in which offsets can be imposed (Article 15.5). The reason: these countries are considered emerging markets. Under this arrangement transition periods may last as long as 25 years. Allowing low-wage countries such as Vietnam and Malaysia to utilize these investment incentives to build their home aerospace markets is an unfair advantage that has the potential to drive future investment away from countries such as Canada and the US.

Auto and Auto Parts Sector

Automotive products (passenger vehicles and parts) are Canada's number one export product. The auto industry is also a major economic driver of the Central Canadian economy, employing more than 120,000 workers directly (and supporting hundreds of thousands more jobs in economic spin-offs). And it is widely viewed as a strategic export industry for many developing and developed nations around the world. Despite all of this, Canada's auto industry has been the big loser in TPP negotiations.

Auto provisions in the TPP are expected to cause significant damage to Canada's auto industry through three distinct channels:

- Firstly, the TPP will facilitate more auto imports into Canada, especially from Japan, as Canada's existing 6.1% auto tariff is quickly eliminated (in just 5 years, whereas the U.S. will phase-out its 2.5% passenger vehicle tariff and 25% truck tariff over 25 and 30 years, respectively);
- Secondly, drastic changes to vehicle content requirements (i.e. Rules of Origin thresholds for passenger vehicles that will drop from 62.5% under the NAFTA to 45% under the TPP) will allow vehicle imports from Japan and elsewhere to embody a majority of non-TPP content from China or other low-wage countries;
- Thirdly, the TPP will encourage the offshore relocation of much of the North American auto supply chain, as the regional parts content rule is cut to 35-45% (depending on the part) from 60%. In fact, special TPP "flexibility" provisions could further reduce these originating material requirements by an additional 10%.⁴

³ https://www.ic.gc.ca/eic/site/042.nsf/eng/h_00020.html

⁴ For additional detail, and extensive analysis, on the potential impact of the TPP's provisions on the Canadian auto industry, see:

The auto terms of the TPP are very close to the original (secret) US-Japan deal that came to light in Maui, at the tail-end of negotiations – a side deal that was struck without Canada’s knowledge or input.

The TPP auto provisions in no way constitute a victory for Canada. The vague safeguards established between Canada and Japan in a side letter is unlikely to meaningfully alter the one-way nature of Canada’s auto trade with Japan – and effectively be triggered only after industry damage has been done.

There is also nothing in the TPP that will spark any meaningful increase in Japan’s extremely small imports of Canadian-made automotive products. It is simply not credible to believe that other Asian countries in the TPP (including Malaysia and Vietnam) will ever buy substantial volumes of automotive products from Canada given the regional structure of the global industry. Therefore, the hypothetical upside for our auto industry from new exports to Asian countries can never offset the known downside which we will experience: via a widening trade deficit with Japan, caused by increased imports, and via the relocation of a significant portion of our supply chain right out of the TPP.

Dairy Processing Sector

Unifor represents more than 10,000 workers in Canada’s food and beverage processing industries, including thousands in the dairy sector. Unifor members work at some of Canada’s largest dairy processing facilities, including Nestlé, Parmalat, Saputo and others.

Canada’s dairy processing industry is a world-leader in both product safety and quality standards. In 2014, more than \$17 billion worth of fluid milk, cheese and other products were shipped across Canada and to other parts of the world (although most dairy production is aimed at domestic consumption), from nearly 450 processing facilities. The industry employs nearly 45,000 farmers and factory-workers and is the third largest component of Canada’s agricultural industry⁵.

The dairy sector operates under a system of supply management, used to manage production levels, set industry price standards and control import flows. Despite initial concerns, the TPP did not result in the wholesale dismantling of Canada’s supply management system. However, the final agreement did include significant concessions to import quotas for all dairy products (phased in over various timeframes). The Dairy Farmers of Canada⁶ estimate that up to 3.97% of domestic production will be displaced through new import quotas (not including the import

[https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/07/D
evil_Is_in_the_Details.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/07/Devil_Is_in_the_Details.pdf)

⁵ Canada’s Dairy Industry at a Glance, produced by Agriculture and Agri-Food Canada:

http://www.dairyinfo.gc.ca/pdf/At_a_glance_e_2014.pdf

⁶ Dairy Farmers of Canada presentation to Standing Committee on International Trade, February 25, 2016:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=e&Mode=1&Parl=42&Ses=1&DocId=8126607>

penetration outcomes of the Canada-EU CETA, if ratified) – representing an annual industry revenue loss of up to \$250 million. We can anticipate that a significant rise in processed dairy goods will further displace production jobs in Canada, over the long term.

Additional concerns have been raised with respect to the application of health, safety and phytosanitary regulations and standards. Unlike other TPP nations (including the U.S.), Canada bans the use of rBST hormones in dairy cows. And while reports⁷ suggest Canada’s food safety standards will remain intact under the TPP, those same rules will not apply to dairy imports – despite Health Canada’s ban.

Health Sector

Unifor represents over 30,000 front-line health care workers across Canada, in hospitals, long-term care facilities, emergency medical services, community and social services and in home care. Unifor is an advocate for Canada’s public health system, as well as for the improvement of hospital services and the development of a national Pharmacare program.

Among the many controversial aspects of the TPP is the impact it will have on prescription drug costs in Canada. According to health policy expert Joel Lexchin, the intellectual property chapter of the TPP (Chapter 18) “contains additional monopoly rights for brand-name pharmaceutical companies in the form of extended patent terms, while locking in Canada’s costly patent-linkage system and permanently setting long data exclusivity terms on traditional and biologic drugs.”⁸ In short: the TPP grants new rights to brand-name drug manufacturers – locking in patent protections beyond the standard 20-year term – and delaying lower-cost generic drugs from getting to market. Drug costs already account for the second-largest share of health care spending in Canada since 1997 while growth in drug spending was highest among all major health expenditure categories during the past decade. TPP would only make things worse.

Under the TPP, Canadians can expect drug costs to balloon by hundreds of millions of dollars, annually – an added burden to Canadians who already pay the second-highest per capita drug costs in the world.⁹ These added costs put additional strain on workplace health benefit plans and make medicines less accessible to citizens. More concerning is the impact these higher drug prices will have on citizens in low-income countries, who are more susceptible to disease and infection – a view shared by *Médecins Sans Frontières* and other health advocates.

⁷ CBC News Report (October 23, 2015), TPP would allow milk from cows receiving hormones into Canada: <http://www.cbc.ca/news/politics/trans-pacific-partnership-milk-imports-hormones-1.3276739>

⁸ Lexchin, Joel (2016) “Involuntary Medication: The Possible Effects of the Trans-Pacific Partnership on the Cost and Regulation of Medicine in Canada,” published by the Canadian Centre for Policy Alternatives: https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/02/Involuntary_Medication.pdf

⁹ Canadian Institute for Health Information (2014): https://www.cihi.ca/web/resource/en/nhex_2014_infosheet_en.pdf

Disturbingly, pharmaceutical companies who already stand to benefit from extended patent terms will be given further protections under the TPP investment chapter – which explicitly covers intellectual property rights, and contains no general exemption for public health matters. That means drug firms will be able to enforce their patent rights through investor-state arbitration tribunals, and we should expect these firms to exercise these rights. In fact, Canada is currently being sued for \$500 million through a NAFTA settlement tribunal by drug manufacturer Eli Lilly after a superior court overturned patents on two products.

Media Sector

Unifor represents more than 12,600 Canadian media workers. This includes members in the print newspaper, graphical/commercial printing, film and broadcast sectors – all significant parts of Canada’s broader cultural industry. Unifor members create and distribute Canadian news, information and entertainment programming across our airwaves, both locally and nationally. Our members also work for radio and television stations serving local communities, pay and specialty TV stations, as well as distribution services that include cable, satellite and wireless telephony.

Canada’s media industry contributes to the development of our nation’s unique culture and identity. This is especially important in light of Canada’s proximity to the United States, and the persistent influence American culture has within our borders – and across the English-speaking world.

Governments and regulators need the freedom to establish policies that serve our nation’s best interests and protect our heritage. Unfortunately the TPP restricts those freedoms in very serious ways:

- Canada’s Annex 2 cultural reservation (as part of the Cross-Border Trade in Services and Investment chapter) disallows Canadian regulators from establishing cultural policies deemed “discriminatory” to service providers and investors, and that restrict access to on-line foreign content. For example, experts suggest this could prevent the CRTC from applying future Canadian-content requirements on U.S.-based online service providers, like Netflix, which are currently exempt from such requirements.¹⁰ In many respects, our ability to ensure on-line (also known as “Over-the-Top”) television service providers contribute equally to the production of on-screen CanCon will ensure the ongoing viability of existing, and depleting, revenue streams over the near and longer term.
- The TPP ignores all existing international legal treaties designed to protect culture, including the 2005 UNESCO Convention on the Protection and Promotion of the

¹⁰ Michael Geist, “The Trouble with the TPP, Day 18: Failure to Protect Canadian Cultural Policy,” January 27, 2016: <http://www.michaelgeist.ca/2016/01/the-trouble-with-the-tpp-day-18-failure-to-protect-canadian-cultural-policy/>

Diversity of Cultural Expressions. The absence of any reference to existing legal instruments, like the UNESCO treaty, creates uncertainty as to whether cultural policies are fully protected against other TPP trade and investment objectives¹¹.

Telecommunications Sector

Unifor is Canada's largest union in the telecommunications sector, representing more than 26,000 workers in all regions of the country. Unifor members work at companies such as Bell Canada and its subsidiaries (including Bell Aliant, Expertech, Bell Technical Solutions), SaskTel, MTS, Allstream and others.

The inclusion of telecommunications services under trade treaties has long been a contentious issue. The telecommunications industry is not only a highly sophisticated and technologically-intensive sector of the economy (which fuels productivity and can promote good-quality jobs) it has implications for Canada's national security – as telecom firms gain access to a copious amount of consumer (and citizen) data and other information that is highly sought after by marketers and/or security officials. The inclusion of telecommunications services in trade agreements is not uncommon (it forms Chapter 13 of the NAFTA, in fact) – but as telecommunications services continue to expand, and as foreign service providers continue to explore new markets for investment, greater strategic attention and care is paid to it.

Under the TPP, member states have agreed that access to telecommunications facilities, the allocation of spectrum frequencies as well as the establishment of investment provisions will incorporate “non-discriminatory” terms and conditions. At the same time, government officials claim that Canada has maintained the rules governing foreign investment in telecom – most notably, restrictions on foreign ownership under the Telecommunications Act which mandate carriers that hold more than a 10% industry market share must be at least 80% Canadian-owned.

Canada's current foreign ownership rules under the TPP are considered ‘non-conforming measures’ (i.e. a law or regulation that does not conform to the spirit of the trade pact, but is still permissible since it already exists), and identified in the list of Annex I reservations. However, any attempt to strengthen those existing foreign ownership rules may be subject to challenge as unnecessary or discriminatory under the National Treatment provisions in the TPP Investment chapter – imposing a ‘ratchet’ effect of greater (not less) deregulation in the industry.

There is further uncertainty over how TPP rules might limit Industry Canada's ability to establish and apply spectrum and frequency management policies, including the ability to allocate frequency bands. In the past, Industry Canada has set aside particular blocks of frequency for

¹¹ Alexandre L. Maltais, “The TPP and Cultural Diversity,” March 2016. Published as part of the Canadian Centre for Policy Alternatives series on TPP entitled What's the Big Deal? Understanding the Trans-Pacific Partnership: <https://www.policyalternatives.ca/publications/reports/tpp-and-cultural-diversity>

new entrants in a spectrum auction (referred to as preferential spectrum allocation). Article 13.19 of the TPP appears to preserve the right of parties to set such spectrum management policies, but in a manner that is still consistent with other parts of the accord – a vague provision that provides minimal assurances for industry policy-makers.

Unifor’s position on industry-specific matters

On the range of industry-specific issues raised above, Unifor submits the following recommendations with respect to the TPP and to any future trade pacts Canada may explore:

1. No trade deal should place restrictions on the Canadian government’s ability to implement “offset” requirements as part of major aerospace and defense procurements, its ability to direct spending in a manner that maximizes the benefits to Canadian workers or supports high tech innovation and research and development.
2. The TPP must not reduce the regional value thresholds contained for automotive products in the NAFTA, and would preferably increase them. (By expanding the number of countries in the free trade zone, the TPP makes it easier, nor harder, to meet existing regional value thresholds);
3. The TPP must have strong safeguard provisions to prevent against large trade imbalances in auto and ensure that the trade deal leads to greater Canadian exports (not just imports);
4. The TPP must include restrictions on the manipulation of exchange rates and other macroeconomic measures aimed at curtailing imports and promoting exports;
5. We fear annual dairy industry revenue losses will be irreversible, despite any assumed export opportunities for Canadian dairy products; and job losses are imminent (both as a result of new import provisions in the TPP and Canada-EU CETA);
6. Canadian health and phytosanitary standards must apply to all dairy products sold in Canada, whether produced here or elsewhere – there can be no double-standard for imported dairy products, and Canadians need assurances that current standards will be upheld;
7. Intellectual property provisions in the TPP (and any trade deal) should not lead to higher drug costs or other undue restrictions on public access to knowledge and information;
8. A principled and fair trade framework should promote greater access to life-saving and disease-fighting drugs for all people in need, around the world – not restrict access;
9. There should be no provisions placed in trade agreements that restrict the CRTC’s ability to impose licensing and Canadian-content requirements on foreign online broadcasters, commensurate with rules that apply to Canadian firms;

10. All trade treaties must contain a full and unequivocal exemption for culture, and must make clear reference to existing cultural protection treaties including the 2005 UNESCO Convention;
11. Nothing in the TPP, or any other trade deal, should limit or prevent Canada from establishing rules restricting the foreign ownership of telecommunication services, whether those rules exist now or shall be applied in future; and
12. Greater clarity is desperately needed on the policy flexibility afforded to Industry Canada under the TPP and its ability to set spectrum allocation policies that are in the public interest.

Conclusion

For all of the anticipated negative impacts the TPP will have on Canadian industry, including those industries identified above, Unifor maintains its view that the proposed treaty is fundamentally-flawed and should not be ratified in its current form.

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