University of Ottawa
School of Epidemiology, Public Health and Preventive Medicine
Faculty of Medicine

January 27, 2016

OPEN LETTER

The Honourable Minister of International Trade, Chrystia Freeland, the Honourable Minster of Health, Doctor Jane Philpott, and Deputy Minister of International Trade, Christine Hogan.

Dear Minister Freeland, Minister Philpot, and Deputy Minister Hogan:

First, Minister Freeland, accept our congratulations on your election and acceptance of this challenging portfolio. As health researchers with a long record of work and engagement around issues of trade and health, we look forward to being able to work with your Ministry in the coming years.

Second, and specifically, we have recently completed a CIHR-funded health impact assessment of the Trans-Pacific Partnership (TPP) agreement and summarize here some of our findings. We believe this is timely given your stated intent to sign the TPP in early February. While we accept that signing and ratification are separate political stages, we are concerned with the signal that 'signing' sends before full public discussion of the agreement's potential health benefits and risks.

One area of concern for public health are changes that the TPP will bring to the Intellectual Property Rights (IPR) regime, and how such changes will translate into additional costs to the health care systems of TPP member countries including Canada. The TPP will lengthen the time that life-saving drugs can be patented by allowing 'patent term extensions' for regulatory delays and by loosening the criteria by which existing pharmaceuticals can be re-patented for new uses (so-called 'evergreening').

Some of the TPP provisions Canada has already agreed to in the Comprehensive Economic Trade Agreement (CETA) with the European Union signed by the previous government, although CETA remains to be ratified with some doubts about when this will, if ever, occur. The additional costs of these concessions, now embedded within the TPP, have been estimated at between $850 million and $1.6 billion annually. Canada already has the second-highest drug prices in the world, and further increases will undermine the sustainability of the publicly funded health system.

The inclusion of biologics in the TPP is the first time these have been

850 Peter Morand Crescent
Ottawa ON K1G 3Z7
Canada

www.uOttawa.ca

part of a trade agreement. The minimum 8 years of market exclusivity for these new generation drugs has raised additional public health concerns as these products are increasingly important for treatment of cancer and immune disorders. Indeed, the question of how best to incentivize and reward research and development (R&D) of new drugs outside of legally binding patent protection treaties has been a topic of global public health importance for some years and have led the UN General Assembly to search for alternatives, while TRIPS and TRIPS+ provisions have been the subject of intense debate at the World Health Assembly. The assumption that patent protection is the best way to incentivize R&D is by no means a universally accepted one.

Another widely shared concern is the role of Investor-State Dispute Settlement (ISDS) mechanisms in the TPP. The use of ISDS by foreign investors to sue governments over regulatory decisions that they believe have compromised the value of their investments has risen in the past decade. A 2013 review of ISDS claims found that 40 cases involved health or environmental protection, including food safety, pharmaceuticals and tobacco control measures. Most of the environmental disputes have important indirect health implications as well.

Official claims that the TPP ensures the rights of Parties to regulate in the public interest are based on Article 9.15 of the Agreement's ISDS Chapter, which states that "nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing *any measure otherwise consistent with this Chapter* that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives" (our emphasis). The five italicized words effectively undermine the entire Article, since governments can undertake such regulations only if they abide by all the rules of the ISDS Chapter. This offers scant protection from investor suits over changes in health or environmental regulations or policy.

Signing on to the TPP could thus become a stumbling block for the Canadian government in its recently announced desire to introduce plain packaging of tobacco products, which have been challenged in other jurisdictions through ISDS. The tobacco exclusion offered in the TPP does not prevent 'treaty shopping' by tobacco firms from which launch a dispute, nor does the recent rejection of the Philipp Morris challenge to Australia's plain packaging law offer any assurances, since the tribunal ruled only on jurisdictional grounds and not on the substance of the claim. There is also concern that alcohol policy and regulations could similarly be undermined and thwarted through ISDS challenges.

Those are some of the more apparent health risks. We accept that there are potential health gains as well. Chief amongst these are the positive health externalities that may be associated with the economic growth and employment that are frequently claimed to

follow from further trade and investment liberalization. The actual health impact will depend on the redistributive effects of such growth. To the extent that economic gains benefit all countries, are substantial and 'trickle down' in a somewhat equitable fashion to all workers, there is a potentially powerful health gain in people accumulating more of the resources needed to lead a healthy life.

However, the most widely cited estimate of TPP annual income gains (achieved only by 2025) average only 0.5% of GDP across the 12 Parties, just 0.2% more than global economic income gains (the background trend) over the same period. High-income TPP parties, such as Canada, will gain less while lower-income TPP parties, notably Vietnam, will gain more. However, the econometric models used to make this prediction are based on full employment—that all labour lost in non-competitive sectors will be absorbed by growth in the competitive ones. Empirically, this has rarely been the case. Governments appear to accept this with the TPP given, for example, Canada's commitment of over CDN 5 billion to two sectors (automotive and dairy farming) that are expected to lose as a result of the agreement. Another problem with most mainstream models is that they assume invariant income distribution.

Alternative, more dynamic econometric models based on more realistic assumptions come to even more sobering conclusions of the TPP's economic gains. A recent study using the United Nations Global Policy Model database predicts mild economic losses for developed TPP economies (-0.04% average annual GDP change) and insignificant growth for developing economies (+0.22% average annual GDP change). It expects a net loss of 650,000 jobs for all TPP countries and, while Vietnam's textile exports will benefit, other developing countries in the region with textile exports as one of their important employment sectors will lose.

For Canada, the study predicts negligible GDP changes (+0.03% annually), and a loss of 58,000 jobs. It also finds that inequality will increase as the share of GDP going to capital will rise and the share going to labour will decline, an upwards redistribution of wealth that has been unfolding globally, and within Canada, for the past two decades. Thus the TPP does not seem to align well with Prime Minister Trudeau's and the new Liberal government's commitment to rebuilding the middle class and addressing inequality head on.

To that end, we would urge that you withhold signing the TPP agreement in February and wait until these concerns receive greater evidence-informed public debate. We recognize this may no longer be feasible, nor is the government's intent. In any event, we are pleased to hear that signing the agreement should not be taken as Canada's intent to ratify it.

We therefore look forward to an opportunity to present our health impact assessment findings in greater detail when public and parliamentary hearings on the agreement are convened; and urge

you to announce dates for these as soon as possible.

In conclusion, and to ensure that our letter is interpreted consistent with our intent, we are not 'anti-trade'. But as public health professionals and researchers we remain concerned that the potential health impacts of agreements such as the TPP (both direct via health system impacts, and indirect via effects on 'social determinants of health') are rarely given full consideration when such treaties are negotiated.

And so we welcome an opportunity to engage in a public discussion on these impacts prior to Canada's decision to ratify the agreement.

Yours respectfully,

Ronald Labonté. PhD, FCAHS, HonFFPH
Canada Research Chair (Tier 1), Globalization/Health Equity
Professor, Faculty of Medicine, University of Ottawa
Professor, Faculty of Heallth Sciences, Flinders University (Australia)
ph: (613) 562-5800 ext.2288
fax: (613) 562-5659
cell: (613) 818-6579
e-mail: rlabonte@uottawa.ca

PS: If you have any questions or comments, or would like to discuss the issues raised here further, please contact either Professor Ronald Labonté at (613.562.5800 ext.2288 or rlabonte@uottawa.ca), Dr. Arne Ruckert at (613 562.5800 ext.7985 or aruckert@uottawa.ca), or Ashley Schram (ashleylgrau@gmail.com).