Submission to The House of Commons Standing Committee on International Trade on the Trans-Pacific Partnership and its impact on Health Care

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Introduction

We are writing this submission because we believe the Trans-Pacific Partnership will greatly impact health care in Canada. While we constantly work to improve public health care for all, the TPP if ratified will create significant challenges and barriers to both strengthening and expanding public health care.

The Canadian Health Care system was created based on the values and ethics of Canadians. The belief that health care should be based on need and not the ability to pay is deeply held by the Canadian public. In 1957 when Canada created the Hospital Insurance and Diagnostic Services Act and in 1966 during the creation of the Medical Care Act, the Canadian public was young and healthy and so we created a national insurance programme covering hospitals and physicians. But today, Canada is facing an aging population. Our seniors (age 65+) make up just over 16% of our population (Statistics Canada, 2015). We need to begin phase two of Medicare. We must create a national pharmacare programme, strengthen public health care in our hospitals and communities, and create a strong and public seniors care strategy. However, as will be discussed below the TPP would impact our ability to do this.

We would like to thank the Committee members for taking the time to read our submission in full. We are available for further comment if needed.

Trade Agreements and Health Care

Canada's public health care system is based on the values of Canadians and those are very clear when it comes to health care: need regardless of the ability to pay. Trade agreements, on the other hand, are in blunt opposition to these values. The principles which regulate the market support the ability to profit. They diminish so called trade-barriers to allow trade liberalization, and allocate services on the basis of purchasing power. Health care and international trade should not mix in Canada and that is why the CHC recommends a strong general carve out for all areas of health care in every trade agreement.

The TPP and a National Public Drug Plan

Canadians know that the cost of medication is often unaffordable. We pay the second highest price for medication of any OECD country (Gagnon, 2014). Twenty-three per cent of Canadians said that in the last 5 years they were unable to adhere to their prescriptions because cost was a barrier (EKOS, 2013). All provinces and territories have implemented programs for people 65 and older and social assistance recipients (Azores, 2013, 3), but co-pays, reimbursement, and eligibility for these programs vary widely (Ibid, 4).

Canadians younger than 65 and not on income assistance have to work within a confusing system of mixed private (for those who can afford it or have work place benefits) and public,

federal and provincial drug plans that leave many people paying high out-of-pocket expenses or not adhering to their prescriptions (Morgan & Daw, 2012).

Canada is badly in need of a national public drug plan. This has been widely recognized by not only the public, but also by premiers and health ministers (Hoskins, 2014). In 2003, the First Minister's Health Accord recognized the need to begin work on at least a national catastrophic drug plan (Health Canada, 2013). With the health accord negotiations currently taking place, we have an opportunity to create a comprehensive national public drug plan that would include everyone. However, the ratification of the Trans-Pacific Partnership will negatively impact the momentum we have on this and cause concerning roadblocks to creating a program that will ensure everyone in Canada can affordably access the care they need.

Canadians pay on average US$713 a year for pharmaceuticals, whereas the OECD average is US$515 (Sinclair, 2016, 7). Canadians' high expenditure on medicines is not due to a particularly high consumption, but rather due to their high cost because of the patent system in Canada (Gagnon, 2014, 6). As of 2001, pharmaceutical companies can expect at least a 20-year patent from the date of filing (Morgan). The length of a patent often runs longer than the 20 years because pharmaceutical companies can file multiple patents on the same drug or use patent claims to block the approval of generics (Ibid).

The TPP would extend the length of patents, thereby increasing the costs of drugs in Canada and delaying the market entry of generics. The TPP demands parties make a patent extension to account for regulatory delays in the approval of drugs (Sinclair, 2016, 7). The patent term adjustment will delay the entry of generics by 287 days and result in an annual increase of $636 million to the cost of patented drugs (Sinclair, 2016, 8). An additional $636 million yearly onto already incredibly high drug prices in Canada will likely lead to more patients unable to adhere to their prescriptions.

Rewarding bad behaviour

It is often argued that by allowing pharmaceutical companies the opportunity to earn higher profits in a country, it will result in more research, more employment, or more breakthrough drugs. This has not been the case in Canada. In 1987, the Canadian government made a deal that the pharmaceutical industry needed to spend 10% of its annual sales on research and development expenditures by 1996 (Patented Medicines Review Board, 2015). In 2014, only 5% of profits were spent on research and development (Sinclair, 2016, 8). Regarding Intellectual property (IP) protection, Edward Iacobucci from the Faculty of Law at the University of Toronto argues that "there is no economic or empirical evidence that suggests that extending IP protection in Canada will meaningfully increase jobs or research and development (R&D) spending in Canada. To the contrary, pharmaceutical R&D appears to be moving toward countries having weaker IP, such as India and China." (2011, ii)

Investor Rights & Investor-State Dispute Settlement

In 2001, at the end of Roy Romanow's Royal Commission on health care he strongly recommended that health care be given a general carve out of all future trade deals (Romanow, 2002). The TPP is far from adhering to this recommendation. In the TPP, governments will be forced to rely on country-specific reservations even for health care (Sinclair, 2016, 10). According to Joel Lexchin, "the TPP would extend ISDS to investors from all TPP countries, including Japan, which is home to a large pharmaceutical industry." (2016, 13).

The TPP will allow foreign investors to sue governments if they are impeding on their rights to make a profit. Canada has substantial experience with investor-state dispute settlements (ISDS) and we often find ourselves on the losing end of the rulings (Sinclair, 2015). As Sinclair notes, ISDS will "effectively lock in privatization" so that once a service is privatized it would be subject to an investor-state claim if it were ever attempted to be brought back into the public system (2016, 10). This is very problematic for health care given the back and forth nature we have with it and the desire by over 90 per cent of Canadians to keep our system public (Nanos, 2011).

Currently in Canada, services like MRIs and CT Scans are being privatized in Saskatchewan. This was attempted in other provinces but it was brought back into the public health care system after private MRIs were found to be too expensive, that they increased wait times, and in some instances exposed patients to high levels of radiation (Mehra, 2007). If we were to move forward with ratifying the TPP, we may not be able to move back to publicly owned and operated MRI and CT scans (or other health care services that have been privatized) without significant legal costs.

Drug Safety

One of the major elements needed in a National Public Drug Plan are new rules and procedures to make drugs safer. Over the past two decades, 3-4% of medicines approved by Health Canada were pulled from the shelves due to safety concerns (Lexchin, 2009, 5). Article 18.28 (4) in the TPP will allow for an expedited review process for drug marketing approval applications. If the current slower review process still allows for 3-4% of medicines to slip through the safety checks at Health Canada, what will an expedited process mean?

Joel Lexchin has also raised concerns that depending on how annexes are interpreted, Canada may lose the possibility of adopting different needs testing for market approval of medications. *Chapter 8: Technical Barriers to Trade*, in the TPP, could be particularly costly for Canadians and block our ability to adopt a superior drugs needs testing policy such as the one which has shown great success in New Zealand (Lexchin, 2016, 10)

Article 8.7(1) could allow other countries a greater voice in the regulatory decisions of medicines in Canada. The text reads:

> Each Party shall allow persons of the other Parties to participate in the development of technical regulations, standards and conformity assessment procedures by its central government bodies on terms no less favourable than those that it accords to its own persons.

There are concerns that the powerful pharmaceutical lobby groups that exist in other countries involved in the TPP (like Japan and the USA) may have an impact on the Canadian government and our ability to regulate drug marketing and the monitoring of drug safety (Lexchin, 2016, 8).

Global Impact

We are very concerned about the impact the Trans-Pacific Partnership will have on patients in developing countries who rely on medication. The 20-year patent extension will delay generic entry on the market meaning prices will increase. Allowing extended patent terms for new uses of older medications creates new monopolies (Médecins Sans Frontières, 2016).

The TPP's requirement that protects data from big pharma's clinical trials will result in a further delay of generic entry on the market, keeping prices high and out of reach for many (Médecins Sans Frontières). Developing Countries requested an indefinite extension to their existing exemption from some TRIPS requirements that could create unsustainable costs for government (Lexchin, 2009, 8). The Canadian public are strong supporters of international development; it is the belief of the CHC that Canadians at large would strongly oppose these artificial barriers being placed on access to medicines for the world's poorest so pharmaceutical companies could profit.

Solutions

The Canadian Health Coalition does not recommend the ratification of the Trans-Pacific Partnership. The TPP will negatively impact the health of Canadians by keeping drug prices inflated, adding new external influences into drug safety monitoring and marketing, creating challenges for the development of a National Public Drug Plan, and lastly, the TPP would truly hurt the world's most vulnerable with delayed market entry for generic drugs. This is not in keeping with Canadian values to expand public health care for all and assist vulnerable countries and their people.

Further, we believe all future trade agreements should contain strong language which provides a general carve-out for health care, as was suggested by the Romanow Commission (2002, 240-243). The CHC would like to propose the language be: "Nothing in the TPP shall be construed to apply to measures adopted or maintained by a party with respect to health care, health services or health insurance."

Who we are

The Canadian Health Coalition is a public advocacy organization dedicated to the preservation and improvement of Medicare.

Our membership is comprised of national organizations representing nurses, health care workers, seniors, churches, anti-poverty groups, women and trade unions, as well as affiliated coalitions in 9 provinces and 1 territory.

Once again, we would like to thank the Committee members for taking the time to read our submission in full. We are available for further comment if needed.

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