Trans-Pacific Partnership needs close scrutiny

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Another push is on to close negotiations on the Trans-Pacific Partnership agreement. Touted by proponents as the biggest trade deal since the World Trade Organization, the TPP's future looks shaky, and several analysts are scratching their heads wondering what the rush is all about. In economic terms, most of the 12 TPP countries will gain only fractional improvements in their GDP.

A recent study suggests the TPP would add just 0.1 per cent to Canada's GDP by 2035. Vietnam, another TPP member, could lose up to 15 per cent of its GDP. Our own study of Canadian business submissions on the TPP to the government found that for many, their interest was not in what they would gain, but fear over what they might lose if Canada wasn't part of the deal.

That fear ripples across many of the TPP countries and is manifest in two of the stumbling blocks to a final deal. One is the rules of origin for auto parts, with Japan wanting a lower domestic-content level than what Canada and Mexico (another TPP country) currently enjoy with the U.S. under NAFTA, leading to a loss in North American auto-sector jobs. Then there's Canada's supply management in dairy and poultry, which several TPP countries would like to see dismantled to open Canadian markets to their milk, cheese and chicken exports. Canadian farmers in these protected sectors are worried, as are many who support retaining policy flexibilities to ensure domestic food security.

Less attention in Canada is being given to more far-reaching aspects of next-generation trade agreements, of which the TPP is presumed to be a vanguard. These agreements are less about trade than about strengthening the rights of transnational corporations and investors and setting global market rules. Two provisions in the TPP are particularly worrisome. One concerns investor-state dispute settlement (ISDS) rules, which give foreign investors the right to sue governments if new regulations or policies threaten the value of their investments.

First enshrined in NAFTA, Canada is already the most sued country in the world. It has so far lost $170 million in NAFTA cases with hundreds of millions more are still pending. Canadian media coverage of the TPP has shown scant regard to this issue, in contrast to the intense scrutiny across Europe of dispute-settlement rules provisions in other trade deals. This attention led the European Parliament to suggest new rules that would protect foreign investors from direct expropriation but, importantly, also protect governments' rights to regulate in the public interest. No more tobacco company lawsuits over public health efforts to reduce smoking and less risk of regulatory chill where governments avoid implementing new food and nutritional policies aimed at promoting healthier diets for fear of a costly challenge to dispute-settlement rules by Big Food.

A second provision of public health concern is the continuous effort by the U.S. (the main force behind the TPP) to extend intellectual property rights (IPRs) beyond current stipulations in the WTO's TRIPS agreement. This issue has received some attention in Canada, much of it on how the TPP's IPR rules might impact the growing digital economy. But expanded IPRs also have implications for drug costs, whether paid for publicly or privately. This is particularly relevant for Canada, which already has the second-highest drug prices in the world.

An analysis of the signed, but not yet ratified, Canada-EU Comprehensive Economic and Trade Agreement (CETA) suggests new IPR provisions under CETA will increase drug costs in Canada from $850 million to $1.6 billion. U.S.-proposed drug patent rules in the TPP are more stringent than those in CETA, especially for new biotech medicines or biologics, which include most new cancer drugs and vaccines.

But there is pushback on both ISDS and IPRs. European concerns with ISDS provisions in the agreement it is negotiating with the U.S. should prompt TPP members, such as

Canada, to ensure the final deal carves out health and environment measures from investor suits and restricts such claims to direct expropriation and illegal property seizure. Several TPP countries, reportedly including Canada, are resisting the expansion of IPRs with respect to drug patents or, in the case of New Zealand, other new trade rules that could weaken that country's cost-effective therapeutic reference pricing system.

To reach a deal, Canada may have to give a little on the stumbling blocks concerning cars and farms. But it should not sign off on provisions that empower global companies and investors over the obligations states have to protect public health and environmental security, especially when so little is at stake economically.

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