

**Submission
by the
Canadian Labour Congress
to the
Department of Foreign Affairs and
International Trade
Regarding
Consultations on Potential Free Trade
Agreement Negotiations with
Trans-Pacific Partnership Members**

February 14, 2012



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Introduction

On behalf of the 3.2 million members of the Canadian Labour Congress (CLC), we want to thank you for affording us the opportunity to present our views. The CLC brings together Canada's national and international unions along with the provincial and territorial Federations of Labour and 130 district Labour Councils whose members work in virtually all sectors of the Canadian economy, in all occupations, in all parts of Canada.

The CLC welcomes the opportunity to participate in these domestic consultations on Canada and the Trans-Pacific Partnership (TPP) negotiations as announced in the Canada Gazette December 31, 2011. It is our understanding that the Canadian government has reviewed and finds acceptable the TPP Outline endorsed by the leaders of the nine TPP countries (Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, the United States of America and Vietnam) in November 2011 after their ninth round of negotiations. This outline calls for a regional agreement which would permit the ongoing accession of countries beyond the original nine, once bilateral discussions have occurred and following from the consensus decision of the group. We understand that Canada hopes to either join the current negotiations, or accede to the agreement in due course.

The CLC stands with trade union centrals in the countries of the TPP who have urged their governments to work for a new international trade and investment framework that has at its core, the promotion of higher labour standards, high-quality jobs and sustainable economic development. We too believe that we cannot afford another agreement giving priority to investor rights over the rights of workers and their aspirations to decent work and decent lives.

We are not opposed to increasing our trade with other countries. Canada is a trading nation, and many workers depend upon Canada's exports for their livelihoods. We envision a world in which increased trade could lift the standards for working people in developing countries and create markets for Canadian products and services in export markets. The promise of free trade is that workers on both sides to an agreement will benefit, but each new agreement fails to live up to its promises. Instead, global corporations are becoming larger, and they have lost all respect for nation states. They withhold investments, invoke capital strikes to pressure governments and slow production when things don't go their way. Trade and investment agreements are not designed to deal with this problem, but they should be. We expect our government to think about how to regulate the activities of these giant conglomerates instead of giving them free reign over our societies.

A Comprehensive Agreement

Given that the TPP engages such a broad range of issues, we respectfully submit our comments on an equally ample agenda. Currently, the negotiating countries intend that the TPP include market access commitments in goods, services and investment. In this respect, it is not a free "trade" agreement, but a "comprehensive" agreement intended to facilitate the regional integration of production and export competitiveness in the global economy. Evidently, the TPP will move deep into participating countries' domestic policies by requiring commitments to deregulate, ensure an economic environment that facilitates "competitiveness," and promote the internationalization of small and medium business activities. The assumption underlying the TPP project is that "development" will depend upon unfettered free markets together with government adherence to trade and investment related disciplines.

Over the past 30 years, free trade and investment agreements have increased the downward pressure on wages, contributed to

concessionary demands and justified the curtailment of workers' rights, instead of raising standards. As the promises of free trade are betrayed, we are, understandably, vigilant about the ever expanding trade and investment agenda as it continues to roll out. Rather than express a new vision of international economic relations which would promote good jobs and sustainable development, we are concerned the TPP framework will rest on the further exploitation of workers throughout the region.

We are concerned that the effect of the TPP will be to make it harder for our societies to do the caring work of looking after the needs of the elderly, the young and the ill through the public and not-for-profit sectors and will increase the burden on families and communities. We expect the concerns of women will be obscured in the TPP and that this agreement will reinforce gender inequalities as they continue to be reproduced by market forces.

Neither have free trade and investment agreements been written to take the need to ensure food security into consideration. We are not pleased to note that the TPP will promote market expansion over concerns for the livelihoods of farmers and ecological sustainability. Instead, we would rather Canada promote our cooperative and well organized systems of agricultural supply-management as models to be shared in the international system.

After 30 years of free trade, the global economy is lurching from crisis to crisis. Yet the current Canadian trade and investment agenda is built upon the assumption that even deeper levels of free trade are required to solve the crisis created by these agreements themselves. The economy cannot exist outside of society, yet free trade agreements undermine our very social fabric by giving corporations unbridled access to markets. Our government continues to enter into trade agreements with an agenda for economic growth rather than economic development.

In a democratic society, governments need to regulate in the public interest — not allow the largest corporations to undermine it.

Relationship to the Doha “Development” Round

For the last decade, developing countries have insisted that the inequalities of the world system must be addressed in the Doha “Development” Round of World Trade Organization (WTO) negotiations. Rich countries have been slow to accept their proposals and have blocked many of them, especially related to agricultural exports from the South to the North, and conflicts persist over the level of industrial tariffs and non-tariff barriers in the South. Because of this stalemate, the more powerful countries are choosing to conclude more “ambitious” agreements with countries of the global south one on one or regionally. The TPP is one example of this. The fact that the TPP will include chapters on investment, government procurement and competition policy is a very clear example of the way the developed world is trying to set a new standard for international trade and investment deals. These chapters are not even on the Doha agenda.

We believe the creation of the TPP is one of the strategies being used to break the resolve of developing nations which have thwarted rich countries goals at the WTO. Canada is among the nations criticized at the recent Ministerial conference of the WTO for lecturing against protectionism abroad, while advocating austerity measures at home. When a government is following an austerity agenda, this reduces its economy’s ability to import. This has the effect of, among other things, limiting markets for exports from the developing world.

At the WTO, Canada has been pressuring countries to lock-in very low tariff rates, even if they are not bound by WTO disciplines to do so, thereby undermining some of the much needed flexibility developing countries have achieved within the strictures of the WTO. To the extent

that Canada is asking countries to dissociate themselves from WTO consistent measures that the Canadian government considers “protectionist,” it is contributing to the stalemate in the Doha Round. Instead, we urge the Canadian government to stand with the developing countries of the Pacific Rim and recognize our shared interest in maintaining, and then expanding the few WTO flexibilities that still exist.

Canada is choosing bilateral and regional negotiations over a commitment to fix the broken multilateral system. If Canada’s action at the most recent WTO Ministerial is any indication, Canada will support WTO-plus disciplines on tariffs in the TPP. Lamentably, Canada already has decided to reduce its tariffs on industrial goods to zero, thus threatening the capital goods sector in this country. If the government pressures other countries to become “free trade zones” too, the largest global corporations will benefit disproportionately at the expense of local innovation and economic diversification.

We call on the Canadian government to commit to the following goals:

Strengthened Labour Rights

Any agreement on labour issues will be meaningless insofar as workers’ rights are undermined by investor-rights provisions, relegated to a side agreement, or defended by sanctions that are non-binding and not enforceable. Investors should be required to abide by the highest standards instead of seeking a competitive advantage by engaging in practices such as the violation of occupational health and safety standards, for example. Workers’ organizations must be included in economic and social decision-making. Any comprehensive agreement must commit to raise labour standards and strengthen inspection and enforcement mechanisms for labour law,

especially with respect to migrant workers and others facing precarious economic and social situations. Dispute resolutions must be based upon an independent and transparent complaints process with a supra-national mechanism of enforcement when states refuse to live up to their own obligations.

We enclose the “New Model Labour and Dispute Resolution Chapter for the Asia Pacific Region,” which has been presented jointly to the current TPP negotiators by the labour movements of the current TPP countries, and request a dialogue with the Canadian government concerning these labour proposals.

Ratification, Implementation and Enforcement of ILO Conventions

Canada has only ratified six of the eight core International Labour Organization (ILO) Conventions. No. 98 - Right to Organize and Collective Bargaining, 1949; and No. 138 - Minimum Age, 1973 are currently under technical review. We urge the Canadian government to move towards ratification as soon as possible. Canada must also ratify two of the ILO's priority conventions for good governance, namely No 81 on Labour Inspections and No 129 on Labour Inspections in Agriculture. We believe Canada should urge TPP member states to do likewise.

Respect for Workers' Rights in Labour Mobility

We believe that labour mobility should be a human right and not a commercial opportunity for exploitation; therefore, issues of labour mobility must not be part of trade deals at all,

where disputes will be evaluated by commercial arbitration panels. Rather, protocols, policies and programs that support labour mobility must be governed under international instruments, such as: ILO Conventions No. 97 on Migration for Employment (Revised), 1949; No. 143 on Migrant Workers (Supplementary Provisions), 1975; the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Their Families; as well as Recommendation No. 86 on Migration for Employment (Revised), 1949; No. 151 on Migrant Workers, 1975; and No. 189 Convention on Domestic Workers 2011 — none of which Canada has ratified.

Sound Industrial Policy

Canada should support industrial policies that promote good jobs for both men and women workers, and young workers. We need active government policies to move us toward “green economy” investments that will ensure a low carbon future, as well as just and sustainable development. The Canadian government should use the tools at its disposal to advance decent work and diversification through support for research and development; sustainable investments and job creation; and training and education.

Given that Canadian workers have experience the negative consequences of a massive, recent wave of takeovers (e.g., Vale Inco, U.S. Steel and Caterpillar), Canada should ensure the right to review foreign investment. Foreign takeovers should be screened to ensure they don’t threaten jobs and communities, and governments should be able to impose conditions, make commitments public, and conduct public reviews of the impact on jobs, wages and labour rights.

No Investment Chapter

There should be no right for an investor or private company to directly challenge, in private tribunals, the laws or regulations of a foreign government that is a party to the trade agreement. This right to challenge should reside solely with the competent government jurisdiction. Governments at all levels should be able to legislate for the benefit of their populations, including by setting certain performance requirements. Governments should be free to regulate in the public interest without fear of being charged with “indirect expropriation” by corporations.

Protection for Public Services

Any agreement should fully protect public services as delivered by the current system, as well as the ability to create new public services without reservation and without negative impacts from a trade agreement. Governments must retain the authority to favour public delivery of services, such as water treatment and distribution, without fear that such a policy would be considered a barrier to trade in services. Canada should ensure that public services are strongly defended from possible trade challenges and negotiate new exemptions for our cherished public services such as health care, water and energy utilities, public education and child care. Trade and investment agreements should not undermine the rights of provinces, territories or municipal governments to act on behalf of their constituents, promote environmental sustainability and ensure workers in their jurisdictions enjoy the full benefits of good jobs and healthy communities.

Strengthened Social Policy

Governments have a responsibility to ensure that universal access to public health care and other social programs is protected in trade agreements. Any comprehensive agreement with the TPP countries must commit governments to full employment, decent work, social citizenship and an end to poverty. The lifting of standards and better working conditions should be the primary goal of the TPP, and countries should be able to maintain a social safety net when this does not happen. Governments need to be able to invest public money in programs such as public pharmacare for the benefit of their societies, but free trade makes this very difficult. Transnational drug companies are seeking unacceptable changes to drug patent laws — including patent term extension, data protection, and new appeal rights for brand name manufacturers — that would reduce the availability of inexpensive, medically effective generic drugs, and significantly increase drug costs to Canadian provincial governments and consumers. If this is permitted under the TPP, it would decrease the access to medicines for other TPP countries as well.

Public Procurement is a Public Right

Canada should not participate in any TPP agreement which would commit to liberalize public procurement at the subnational level, including at the municipal level. Canadian provinces, territories, and cities must retain the policy space they need to use public money in support of sustainable, local, economic development. Canada and all the TPP governments need to ratify ILO Convention No. 94 on Social Clauses in Public Procurement.

The Right to Regulate

There should be complete reservation of the right to domestic regulation regarding public services, culture, finance, public health, and the environment. Along with the precautionary principle, regulatory harmonization efforts must adopt the higher standard, and not simply entrench mutual recognition. Municipalities, provinces and territories, and the federal government must retain the right to develop even higher standards of protection than currently exist.

Respect and Protect Indigenous Rights

Canada has recently pledged to endorse the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). While this is a welcome step, proper implementation requires the government to receive *Free, Prior, and Informed Consent* from Indigenous Peoples whenever Indigenous rights may be affected by any government decision.

Ecological Sustainability and Climate Action

Governments must continue to attempt to reduce greenhouse gas emissions rather than promote increased global trade and the burning of, increasingly dirty, fossil fuels. We must ensure the highest protection of our air, earth and water and act now to ensure we do not go from climate crisis to climate catastrophe. A fundamental policy shift is needed to place environmental, public health and human rights concerns above the limited interests of corporations.

Full Transparency

In past trade negotiations, the public has not received substantive information about the talks until a full and final agreement has been reached. This will be unacceptable to the Canadian labour movement in the case of the TPP. In the case of the TPP, which will have unknown impacts on federal, provincial and municipal policies, programs, regulations, and public services, the public has the right to full disclosure, along with the right to meaningful and informed input into the negotiations.

A Comprehensive Impact Assessment

While the CLC appreciates this opportunity to submit a brief to the Department of Foreign Affairs, the CLC asks the government to conduct full hearings at the International Trade Committee, followed by a full debate in Parliament. We believe the government should issue a call for an independent impact assessment informed by broad stakeholder debate and consultation which would assess the implications of the proposed TPP on the economy, jobs, poverty, gender, human rights, culture, and the environment — in Canada and in the participating countries of the Pacific Rim.

This document is respectfully submitted on behalf of the Canadian Labour Congress:



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TH:dc:cope225/File: 20304-02-06