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THE CPTPP: AN AGREEMENT OUT OF STEP WITH THE TIMES

Submission from the Canadian Centre for Policy Alternatives to the Government of Canada consultation on the mandated general review of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

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Summary

The Canadian Centre for Policy Alternatives (CCPA) is pleased to provide input to the Canadian government as part of the general review of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). According to the government's consultation page, the goal of the public outreach exercise is to help "evaluate the performance of the CPTPP with a view to updating and enhancing the Agreement to ensure that it remains of the highest possible standard for trade agreements."[1]

The recommendations in this submission respond to the last of the government's four leading questions: "Are there existing provisions in the [CPTPP] that would benefit from revision or updating? Do you have suggestions to improve and/or modernize the Agreement, including to address emerging issues such as digital and green economy, supply chain resilience, inclusive trade, and innovation?"

These recommendations do not cover the entirety of the agreement but focus on a few areas where the CPTPP is both out of step with the times and where there should be member country support for change.

In general, our proposals would give CPTPP countries more policy space to respond to the climate emergency, protect and enhance labour rights, develop just and sustainable domestic and regional industrial strategies, adequately regulate the digital economy, and respond to current and future health emergencies.

Specifically, this submission calls for:

- Aligning the investment chapter with the binding obligations in the Paris Climate Agreement
- Updating the CPTPP to protect the rights of Indigenous Peoples and facilitate trading relationships with, between, and among Indigenous Peoples
- Balancing procurement market access with the right of governments and government entities to use public spending to foster social inclusion and fairness
- Strengthening the labour chapter and incorporating a rapid-response mechanism for investigating and penalizing labour rights violations
- Removing or limiting the scope of the digital trade chapter
- Removing the intellectual property rights chapter or permanently deleting the suspended provisions related to patents

Our submission concludes with remarks on the lack of transparency in the work of CPTPP governance bodies. Without more information on the work of CPTPP committees, it is difficult to know what specific trade concerns or future negotiating topics are being raised by member countries including Canada. At the very least, CPTPP governments should invest in a central hub for all treaty documentation and decisions.

Aligning the investment chapter with the Paris Climate Agreement

In 2023, the joint ministerial statement by CPTPP members emphasized that "the CPTPP should continue to be at the forefront of global efforts to promote mutually supportive trade and environmental policies, and contribute to addressing our shared environmental challenges."[2]

Unfortunately, the investment provisions in Chapter 9 of the CPTPP are more likely to hinder than help government efforts to address the climate and biodiversity crises.

The CPTPP investment chapter provides foreign investors with special rights to protect their assets by suing countries before private arbitral tribunals when they are affected by laws, regulations, and other decisions that the foreign investor believes to be unfair. As Gus Van Harten noted in a CCPA series on the Trans-Pacific Partnership (TPP, the CPTPP predecessor agreement involving the United States), "Nothing like these rights exists for other actors in international law, whether they are other foreign nationals, domestic investors, or citizens—even in the most extreme situations of mistreatment."[3]

Governments are frequently brought before ISDS tribunals for revoking licences and permits for environmentally harmful or socially contentious projects. The fossil fuel sector is especially litigious in this respect: it is estimated that 20 per cent of known ISDS disputes involve fossil fuel projects.[4]

Defending against these cases is expensive. High legal and arbitrator fees, on top of growing awards against states in concluded ISDS cases, reduce public resources that could go toward climate mitigation and adaptation or to support communities dependent on the fossil fuel industry for employment. The possibility of incurring these costs through investment treaty arbitration can put a chill on government environmental policy.[5]

For these and other reasons, governments are rethinking their investment treaties and ISDS. The Intergovernmental Panel on Climate Change (IPCC) acknowledges the importance of aligning investment treaties—and investment chapters in trade deals like the CPTPP—with the Paris Agreement to rapidly lower greenhouse gas emissions.[6] In a recent speech, Mary Robinson, former president of Ireland and current chair of The Elders, noted this task "could scarcely be more urgent."[7]

The Paris Agreement and procedural justice for investment impacted communities

The preamble of the Paris Agreement refers to "climate justice" and a "just transition." Most conceptions of justice include procedural justice. The investment chapter of the CPTPP is not aligned with the preamble of the Paris Agreement because it does not provide procedural justice to local communities impacted by investments that are made as part of the energy transition.

One of the first ISDS cases launched under the CPTPP arose after Mexico's supreme court determined that local Indigenous communities had not been properly consulted about a gold and silver project

For example, a significant number of investor-state dispute settlement cases have emerged as a result of conflicts between local communities and Canadian mining firms, including those exploring for critical minerals needed for the energy transition.[8] Indeed, one of the first ISDS cases launched under the CPTPP, *Almaden Minerals & Almadex Minerals v. Mexico*, arose after Mexico's supreme court determined that local Indigenous communities had not been properly consulted about a gold and silver project and had not provided their Free, Prior, and Informed Consent.[9]

For local communities that have been impacted by an investment project, the opportunities to participate in ISDS proceedings is extremely limited. Article 9.23 of the CPTPP notes that "the tribunal may accept and consider written *amicus curiae* submissions" (emphasis added). Thus, tribunals have discretion to choose whether to accept briefs from impacted communities and whether to seriously consider the content of these briefs. In ISDS practice, often neither occurs.

For example, in *Kappes v Guatemala*, a case that arose following local community opposition to a silver mine, the tribunal rejected an *amicus curia* submission from an "environmental justice movement comprising community members" on the grounds that the group had failed to identify its membership with sufficient specificity.

Even when *amicus* briefs are admitted, they represent a very limited mechanism for participation in ISDS tribunal proceedings. The people or groups who submit them often have no access to other documents submitted to the tribunal that could inform their interventions, have limitations placed on the scope and length of their submissions, and are not permitted to appear before the tribunal. As Ladan Mehranvar of the Columbia Center on Sustainable Investment argues, "local voices are simply excluded from the inherent logic of the regime by design."[10]

In July 2024, 210 groups representing Indigenous Peoples, unions, and non-governmental organizations published a set of "Principles to Ensure Energy Transition Minerals Advance Justice, Equity and Human Rights."

Principle 4.2 calls on governments to "withdraw from or terminate existing agreements that provide for investor-state dispute settlements (ISDS)."[11]

The Paris Agreement and climate-resilient development finance

Investment treaty protection can be thought of as akin to political risk insurance provided to foreign investors by governments, free of charge. As noted by David Gaukrodger, a senior legal advisor at the Organization for Economic Cooperation and Development (OECD), "Investment treaties form an important part of the public policy framework for finance flows with climate consequences."[12]

Article 2.1(c) of the Paris Agreement calls on states to make "finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development."[13] In a survey of governments conducted by the OECD in 2023, a large majority (78 per cent) of respondents noted that it was very important to make the finance flows associated with investment treaties consistent with this article.[14]

To date, there have been at least 349 ISDS cases related to fossil fuel investments resulting in compensation of $82.8 billion USD (about $114 billion CAD) paid to the industry.[15] It is anticipated that the number of ISDS cases will rise as governments begin to take more direct action to limit fossil fuel supply.[16] For example, the rejection of a specific project or a blanket ban on new coal, oil, or gas extraction in the CPTPP region could be challenged by an investor holding an exploration permit.

If governments decide to buy out fossil fuel assets such as power plants (e.g., to retire them early), the private sector owners of those assets could launch ISDS claims challenging the level of compensation on offer. The same companies may threaten ISDS cases to influence buyout negotiations with governments. A prominent lawyer has even suggested that many investors and their lawyers see ISDS as a means by which they can profit from government action on climate.[17]

The imminent accession of the U.K. to the CPTPP is particularly concerning given that U.K.-based firms have lodged 109 claims against foreign governments using ISDS mechanisms in investment treaties, making them the third most litigious group after U.S. and Dutch investors.[18] British fossil fuel company Rockhopper Exploration won about $350 million CAD in compensation for lost future profits over Italy's 2015 ban on offshore drilling—a key environmental policy.[19] The global oil and gas giants Shell and BP are both headquartered in London.

Recommendations

While not an exhaustive list, the following revisions to Chapter 9 (Investment) of the CPTPP would increase the agreement's alignment with participating countries' climate obligations in the Paris Agreement.

1. Renegotiate the agreement to remove access to ISDS

The most comprehensive option for safeguarding climate policy would be for the CPTPP parties to remove ISDS from the agreement, as the U.S. and Canada agreed to do in the renegotiation of the North American Free Trade Agreement (NAFTA). Eliminating ISDS would ensure that no climate policies are arbitrated under the agreement while also safeguarding other critical areas of public policy. As ISDS has no proven public benefit, there would be no downside to this approach.

Deputy Prime Minister Chrystia Freeland noted at the time of NAFTA's renegotiation that: "ISDS elevates the rights of corporations over those of sovereign governments. In removing it, we have strengthened our government's right to regulate in the public interest, to protect public health and the environment."[20] Other CPTPP parties, notably Australia and New Zealand, have omitted ISDS from some of their investment agreements, and ISDS is not included in the Regional Comprehensive Economic Partnership (RCEP), which includes seven current and two aspirant CPTPP member countries.

2. Sign side-letters that disapply ISDS

In the absence of consensus to completely remove ISDS from the CPTPP, Canada should pursue side-letters that disapply the ISDS provisions with as many CPTPP countries as possible, as New Zealand and some other treaty members have done. Canada should start with the U.K. and make disapplying ISDS a precondition of Canada's ratification of U.K. accession to the CPTPP.

3. Allow third party access

Short of eliminating or disapplying the CPTPP's investor-state dispute settlement process, the investment chapter could be amended to allow third parties (e.g., representative of local communities) to join ISDS cases with full rights as a party. This practice is accepted in many jurisdictions around the world, "based on the premise that access to adjudication that directly affects one's vested interests is a fundamental principle of law."[21]

4. Insert a fossil fuel carveout

One option for aligning the CPTPP with Article 2.1(c) of the Paris Agreement is to carve out the fossil fuel sector from the scope of investment treaty coverage.[22] A fossil fuel carveout is under discussion at the OECD and elsewhere and is included in the Energy Charter Treaty modernization. Several investment treaties have carved out other industries from coverage (e.g., tobacco), providing some precedent for carving out fossil fuels as well.

5. Insert a climate policy carve-out

The CPTPP allows parties to "deny the benefits" of investor-state dispute settlement to claims concerning tobacco control measures (Article 29.5). Proposals have been made to similarly carve out or deny benefits to claims arising over climate policies. While this represents a broad range of policies, there are mechanisms that could be developed to ensure that only legitimate climate measures are exempted from ISDS.[23]

Updating the CPTPP to protect the Rights of Indigenous Peoples and promote Indigenous trade

The Canada-United States-Mexico Agreement (CUSMA) was the first international trade and investment agreement to include a clause aimed at comprehensively protecting the rights of Indigenous Peoples in North America. The general exception for Indigenous Peoples Rights, found in Article 32.5 of CUSMA, was modelled on, and improves upon, a general exception for the Treaty of Waitangi developed by New Zealand to protect the rights of Māori in trade agreements.

The Indigenous Peoples Rights exception in CUSMA was developed to apply to both trade and investment disputes. But the eventual policy decision to phase out investor-state dispute settlement from CUSMA, at least between Canada and the U.S., was arguably an even better result for the protection of Indigenous rights in Canada, not to mention the ability of Canada to regulate to protect the public interest.

The CPTPP was negotiated prior to CUSMA. Although the CPTTP includes the Treaty of Waitangi exception, this exception only applies to New Zealand. There is no general exception applicable to protect the rights of all Indigenous Peoples in all CPTPP member states. Māori have also been advocating for a stronger, more comprehensive Indigenous rights carveout in the CPTPP and other agreements.

Canada and other CPTPP countries should amend the agreement to add a general exception for Indigenous Peoples Rights like the one in Article 32.5 of CUSMA

New Zealand and Australia have recognized that ISDS is a threat to their sovereignty and have proactively signed side-letters in the CPTPP—with each other and with the U.K.—that disapply the ISDS procedure as between their countries. Canada has not negotiated this type of arrangement with any CPTPP party. With the eventual accession of the U.K. to the CPTPP, the threat of ISDS claims from U.K.-based investors will undoubtedly increase.[24]

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which many CPTPP countries have adopted, sets out the minimum standards of rights for Indigenous Peoples. These rights include cultural, political, economic, and environmental rights, and the right to self-determination, including the right to participate in decision-making that would affect Indigenous rights through representatives of their choosing.

The CPTPP, unlike the Indigenous Peoples Economic and Trade Cooperation Arrangement (IPECTA) to which Canada, New Zealand, Australia and Chinese Taipei are members, has no mechanism for the participation of Indigenous Peoples. The direct participation of Indigenous Peoples in the negotiation, governance, and review of trade agreements will facilitate trading relationships with, between, and among Indigenous Peoples. The Māori economy is valued at 70 billion NZD (about $57 billion CAD) and growing;[25] in 2021, Indigenous Peoples contributed more than $55 billion to Canada's gross domestic product.[26]

Canada is a member, along with Australia, Chile, Costa Rica, Ecuador, Mexico, and New Zealand of the Inclusive Trade Action Group (ITAG), established on the margins of the 2018 Asia-Pacific Economic Cooperation (APEC) leaders' summit. Many of the ITAG members are also parties to the CPTPP. In a joint statement from the sidelines of the 13th Ministerial Conference of the World Trade Organization in early 2024, ITAG members committed to advance actions for: "Enabling and empowering Indigenous Peoples, promoting Indigenous Peoples' perspectives and voices, and recognising and respecting the importance of developing, expanding and facilitating trade and investment

opportunities for Indigenous Peoples including through Indigenous-led processes."[27]

It may not be possible, at this time, to amend the CPTPP to allow for Indigenous Peoples to participate in decision-making. However, it is within the mandate of the Inclusive Trade Action Group to create an institutional mechanism that ensures Indigenous Peoples have rights of representation and effective participation in decision-making in all ITAG activities.

Recommendations

As noted above, Canada should advocate to amend the CPTPP to **completely remove the investor-state dispute settlement mechanism**. Alternately, Canada can sign side-letters that disapply ISDS between CPTPP member countries, starting with the U.K., and make disapplying ISDS a precondition of Canada's ratification of U.K. accession to the CPTPP**.** ITAG members should also commit to side-letters disapplying ISDS, as this is consistent with their mandate of sustainable and inclusive trade.

Canada and other CPTPP countries should amend the agreement to **add a general exception for Indigenous Peoples Rights like the one in Article 32.5 of CUSMA**. The exception should be codesigned with Indigenous Peoples in the territories of all CPTPP member countries. The Indigenous general exception should create a broad and comprehensive carveout from CPTPP trade and investment disciplines for any measures aimed at upholding and promoting the rights of Indigenous Peoples in any CPTPP country.

As a step toward Indigenous Peoples' participation in the CPTPP, Canada should work with other ITAG members to **ensure Indigenous Peoples have rights of representation and effective participation in decision-making in all ITAG activities**, consistent with the United Nations Declaration on the Rights of Indigenous Peoples.

Making the labour chapter stronger and easier to enforce

The CPTPP labour chapter, while subject to binding dispute settlement, is less ambitious than more recent Canadian trade agreements including CUSMA and the Canada-Ukraine Free Trade Agreement. This is true of

the substantive labour protections and of the tools available to workers for identifying and rapidly addressing labour rights violations.

The CPTPP is missing language on violence against workers, the rights of migrant workers, and discrimination in the workplace included in more recent Canadian and U.S. trade agreements. It is also much weaker than CUSMA on prohibiting imports of goods made using forced labour. This language should be revisited by CPTPP countries with a view to meeting and exceeding more current standards.

The CPTPP labour dispute process is overly cumbersome compared to CUSMA. In a CPTPP dispute concerning a country's failure to enforce its labour laws, for example, the complainant country must prove the violation is a result of a *recurring* or *sustained* course of action and that the respondent's non-enforcement of labour laws directly affects trade or investment. Similar wording in other trade deals has created impassable hurdles to successful labour disputes[28]—the main reason why CUSMA assumes that labour violations affect trade unless a respondent country proves otherwise.[29] The CPTPP labour chapter should reflect the updated language in CUSMA.

A final, important discrepancy between the CPTPP and more recent Canadian and U.S. trade agreements is the availability of tools in the latter for workers to directly address labour rights violations in the workplace. The facility-specific rapid response labour mechanism in CUSMA, while currently only applicable in Mexico, has proven to be an effective way to enforce core labour rights via trade-based dispute settlement.[30]

Seven of the 11 full CPTPP members have agreed to a facility-specific labour rights petition and investigation system in the context of the Indo-Pacific Economic Framework for Prosperity (IPEF) negotiations led by the U.S.[31] It makes sense for CPTPP countries to consider putting in place a similar rapid-enforcement mechanism across all CPTPP countries including Canada.

Recommendations

In summary, Canada should propose to update the CPTPP labour chapter to reflect more worker-centric language and enforcement tools in CUSMA and the IPEF. This should include:

- reversing the onus of proof in labour enforcement disputes that labour violations do not affect trade;
- adding language on violence against workers, gender-based and other forms of discrimination in the workplace, and the rights of migrant workers; and

- including a rapid-response mechanism so that workers can directly challenge facility-specific violations of International Labour Organization (ILO) labour rights.

Making room for strategic and equitable procurement

The CPTPP procurement chapter is one of the most comprehensive examples of its kind globally. In general, the chapter requires participating countries to treat bids on government contracts from suppliers in other CPTPP countries the same as they would bids from domestic suppliers.

But the CPTPP also broadly prohibits governments from considering or requiring "the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade or similar action to encourage local development" when choosing a winning bidder for public contracts.

Since the CPTPP came into force in December 2018, global circumstances and priorities have changed. Increasingly, Canada's trading partners—like Australia[32], the United Kingdom[33], and the United States[34]—are leveraging government procurement of goods, services, or major construction projects for public and social ends. Canada is also using public purchasing in this way through its Social Procurement Policy, Indigenous set-asides, and reciprocal procurement agenda.[35]

The COVID-19 pandemic has further justified this shift from "open" to "strategic" procurement by exposing vulnerabilities in global supply chains. Now, more than ever, we must balance procurement market access with social and economic inclusion and fairness.

Recommendations

In line with the scope of the CPTPP review, there are ways to make the agreement's procurement chapter more inclusive and sustainable.

1. Revisit procurement commitments

Canada's procurement chapter coverage (i.e., the number of government entities covered by CPTPP procurement rules) is more extensive than most other CPTPP countries. The repeated use of so-called negative listing (i.e., applying the CPTPP procurement rules to all government entities except for those listed in Annex 15-A of the agreement) exposes us increasingly to procurement disputes over time. The result is that Canada is relatively more constrained than other CPTPP countries in the

ability of the federal and provincial governments to use public spending to support inclusive economic objectives.

No other country routinely used negative listing in its Annex 15-A list of government entities covered by the CPTPP procurement rules. The provinces and territories are the worst offenders in this regard. Each jurisdiction should follow New Brunswick's lead and explicitly list which entities are covered (i.e., positive listing). This will avoid unintended creep in procurement coverage going forward. It will also keep the CPTPP more equitable between participating countries consistent with the federal government's reciprocal procurement strategy.[36]

2. Be strategic with Canada's derogations from procurement rules

Canada already derogates (i.e., makes favourable exceptions to the CPTPP procurement rules) for small business and Indigenous procurement. Given the federal government's focus on inclusive trade, Canada should also derogate for procurements supplied by (or for) racialized (e.g., Black-owned businesses), women and gender minority, and other equity-seeking groups.

This would not be unprecedented. In its CPTPP procurement annex, Vietnam derogates for procurement measures that benefit the "health, welfare and the economic and social advancement of ethnic minorities." Similarly, Canada could benefit from other derogations beyond supplier identity. For instance, Australia and New Zealand exclude from their CPTPP commitments public spending related to "national treasures of artistic, historic, archaeological value or cultural heritage."[37] Canada should do the same.

3. Adjust the CPTPP language (or lack thereof) on subcontracting

Subcontracting is the practice of shifting components of a government contract to an outside supplier. Subcontracting can represent a significant portion of total public expenditures. If Canada wants to advance inclusive procurement initiatives, we should ensure our trade commitments do not get in the way. Greater clarity within the CPTPP on subcontracting would be advantageous.

Moreover, as countries focus on supply chain resilience, Canada could amend its procurement annex to exclude subcontracting commitments for sensitive areas. For example, Québec excludes procurements "of construction-grade steel (including requirements on subcontracts)."[38] This is not only important for tracking procurement dollars, but also for ensuring sustainable supply chains. Canada and other CPTPP countries may want to pay particular attention to the subcontracting of critical minerals.

4. The CPTPP procurement committee needs a greater mission

The CPTPP procurement committee, one of nearly a dozen subsidiary bodies under the agreement, is undermined in two regards. Foremost, the committee's scope is mainly to consider more procurement liberalization. The committee should expand its scope to include supply chain resilience, sustainable or social procurement, and data collection standards.

Relatedly, the CPTPP procurement committee's work is not transparent. It is difficult to find any information of the committee's activity. There should be an expectation that reports, meeting agendas, minutes and other documents are publicly available, and even opportunities for civil society to participate in future decisions related to procurement.

5. Reflect on our procurement information regime

As noted in the Procurement Ombud's[39] and Auditor General's[40] reports into the ArriveCan scandal, there are inadequacies in our federal procurement data. Accessing public purchasing information is no easier at the provincial level. This not only matters for the Canadian public and the accountability of public entities, but also to CPTPP countries and their suppliers who hope to bid on public contracts in Canada. At a minimum, we need consistent, publicly available information on public entity purchases that includes different measures of origin, subcontracting, and applied set-asides.

In summary, the CPTPP's procurement chapter is in need of reform. However, some of the changes proposed here will be of limited value if similar changes are not also made to Canada's other trade-based procurement commitments, namely in CETA—the Comprehensive Economic and Trade Agreement with the European Union. With that in mind, Canada should develop a comprehensive procurement strategy for future agreements and to inform reviews of existing agreements like this one on the CPTPP.

Removing the CPTPP's outdated digital trade rules

The CPTPP's digital trade disciplines in the e-commerce chapter are already severely out of date. Once the biggest champion of these provisions, the United States now rejects CPTPP-like prohibitions on the regulation of cross-border data flows (Article 14.11), restrictions on public access to company source code and algorithms (Article 14.17),

and data localization requirements that prohibit countries from requiring that sensitive or strategic information be stored on domestic servers (Article 14.13). The last available chair's text of a proposed World Trade Organization (WTO) plurilateral agreement on e-commerce, which includes all CPTPP parties except for Vietnam, does not include any of these controversial provisions.[41]

These provisions—as well as the CPTPP's ban on customs duties on electronic transmissions and a requirement to treat all digital products equally, no matter the country of origin—limit the ability of all treaty member countries to foster domestic competition to established, largely U.S. firms that currently dominate the digital economy. They also interfere, unreasonably, with efforts to regulate predatory behaviour by digital companies, fairly tax foreign digital services providers, or protect workers and consumers from abusive surveillance practices.[42]

Recommendations

Ideally, **the CPTPP e-commerce chapter should be deleted**. As United States Trade Representative Katherine Tai said in late July, "it turns out [data] is not just some kind of lubricant for allowing for traditional global goods transactions but has become the game itself." It does not make sense, Tai said, to apply a "liberalization program" to digital trade discussions.[43] This is precisely what the CPTPP does, on behalf of powerful U.S. tech lobbies, to the detriment of a more reasoned, strategic, and evidence-based discussion about equity and opportunity in the digital economy.

If the e-commerce chapter remains part of the CPTPP, the **provisions on cross-border data flows, data localization, source code, and non-discrimination should be deleted** in keeping with more recent thinking about digital trade. Alternately, CPTPP countries could exclude these provisions from the scope of the agreement's dispute settlement chapter, as Vietnam and Malaysia currently do, only for future measures as well as current measures.

Removing the intellectual property–based threats to public health, farmers

Several of the CPTPP's most problematic intellectual property rights provisions were suspended after the United States withdrew from the Trans-Pacific Partnership in early 2017. These include an evergreening

CPTPP countries should agree to permanently delete the currently suspended intellectual property rights provisions covering patents, patent terms adjustment, data exclusivity and biologics

clause (Article 18.37.2) requiring countries to make patents available for new uses of old products, patent term adjustment (extension) for delays in the patent application process (Article 18.46), and minimum data exclusivity periods for medications (five years) and biologics (eight years).[44]

All these provisions, by extending monopoly rights on patentable goods, increase costs for public health authorities and consumers, who must pay more for brand name versions of medications for longer periods of time. These intellectual property rights also make it difficult for lower-income countries to produce or import cheaper versions of health products (e.g., vaccines, therapeutics, diagnostic tools, medical devices) under compulsory licences. Many countries raised this problem at the WTO during the COVID-19 pandemic, in what became known as the TRIPS waiver proposal.[45]

Recommendations

CPTPP countries should agree to **permanently delete the currently suspended intellectual property rights provisions covering patents, patent terms adjustment, data exclusivity and biologics**. While Canada has unfortunately agreed to similar patent term extensions in the Comprehensive Economic and Trade Agreement with the European Union (CETA) and the Canada-U.S.-Mexico Agreement (CUSMA), lower-income CPTPP member countries would benefit from knowing these clauses will never be activated.

But we can go further. The U.S. no longer negotiates TRIPS-plus intellectual property rights in new trade agreements. That includes extended copyright terms in the CPTPP, and the treaty's stronger enforcement requirements for plant variety protections designed to increase the power and profits of seed companies while restricting the ability of farmers to save seed.[46] There remains significant opposition to these disciplines within Canada and in CPTPP countries like Malaysia.[47] Arguably, **the intellectual property rights chapter *as a whole* should be deleted from the CPTPP**.

Furthermore, CPTPP countries should **support a Colombian proposal at the WTO to comprehensively review the 30-year-old TRIPS agreement**, especially in light of the pandemic experience with unequitable access to vaccines and other medical goods. The proposal notes that "the TRIPS Agreement norms provide a significantly stricter framework than what existed under the [World Intellectual Property Organization] substantive agreements."[48] Colombia recommends a detailed analysis of international concentration in knowledge intensive sectors, royalties paid for use of intellectual property rights, use of compulsory licences, nationality of innovators and use of patents, and other important questions.

Transparency in CPTPP committees and dispute settlement

Like other bilateral and regional trade agreements, the CPTPP was conceived as a "living agreement" that can be updated, enlarged to include new members, and is governed by an all-party commission informed by subsidiary committees or working groups linked to specific CPTPP chapters. However, it is difficult to get a comprehensive picture of the work of the commission or discussions of CPTPP committees, as information varies from country to country.

For example, the joint statement from the second CPTPP commission meeting in Auckland, New Zealand, in October 2019, mentions that the 12 CPTPP committees met for the first time to establish work plans and identify areas of cooperation.[49] The Canadian government's CPTPP website has no record of these workplans that we could find.[50] Singapore, meanwhile, posted consolidated subsidiary committee reports for 2022 only[51], as New Zealand did for 2023.[52]

Information about dispute settlement under the CPTPP is also not easy to find. Canada's CPTPP developments webpage does not even mention New Zealand's CPTPP dispute involving the regulation of Canada's dairy import quotas. New Zealand, on the other hand, has published virtually all documentation related to the case that was in its power to release to the public. "Canada's written submissions and submissions of non-governmental entities are available upon request to Canada's Responsible Office," states the same web page.[53]

Governments, researchers, businesses, and the public should not have to visit multiple websites to access information about the CPTPP,

its working groups, or disputes under the agreement. It should be straightforward to create and jointly manage a standalone website for the CPTPP commission, available in all CPTPP country languages, to consolidate publicly available documentation about the agreement. The CUSMA Secretariat website co-managed by Canada, Mexico, and the U.S. may offer a model in this respect.[54]

Notes

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About the Canadian Centre for Policy Alternatives

The CCPA is a public interest research institute guided by principles of social, economic, and environmental justice. The centre was founded in 1980 to advance progressive policy options that centre the economic interests of workers, gender equality, the preservation and expansion of Canada's publicly-funded and delivered social services, and the protection of the environment. Today the CCPA covers a much wider policy area from its national and provincial offices. Since 1999, the CCPA's Trade and Investment Research Project (TIRP) has pooled expertise from academia, non-governmental organizations, and the labour movement to research the implications of free trade agreements and investment treaties on public policy, economic outcomes, the environment, and democratic governance.

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