

April 28, 2017

The Honourable Chrystia Freeland  
Minister of Foreign Affairs

The Honourable François-Philippe Champagne  
Minister of International Trade

The Honourable Dr. Jane Philpott  
Minister of Health

Dear Ministers:

**Re: Canadian leadership needed on human rights and access to medicines if a renegotiated Trans-Pacific Partnership (TPP) is to move forward**

We write to you in advance of Canada's meeting with senior trade officials from TPP countries on May 2-3 in Toronto to map out the future of the agreement in light of the United States' withdrawal. This meeting presents a critical opportunity for Canada to demonstrate human rights leadership—both nationally and globally.

As it stands, the intellectual property chapter and other provisions of the TPP will undermine the ability of some of the world's poorest people to gain access to affordable medicines, and will be detrimental to Canadians' access in the longer term. If the deal advances in its current form, individuals, public health systems and insurance providers will have to spend more to purchase drugs. Many of the world's poorest people will not be able to afford these drugs, and many will suffer ill health or death as a result.

**As drafted, the provisions of the TPP's intellectual property chapter go far beyond existing international agreements in their adverse impact on access to medicines**—including the requirements in the World Trade Organization's *Agreement on Trade-Related Aspects of Intellectual Property Rights* ("TRIPS"). The TPP's provisions limit and undermine countries' ability to use the safeguards and flexibilities that were included in the TRIPS Agreement to protect the public interest (such as "promoting access to medicines for all"), safeguards that were reaffirmed unanimously by World Trade Organization (WTO) members in the landmark "Doha Declaration."<sup>1</sup> The "TRIPS-plus" intellectual property chapter of the TPP will delay, impede or chill competition in the marketplace, which is a critical factor in lowering the prices of medicines—as has been clearly demonstrated by the global experience with antiretroviral drugs needed to treat millions of people with HIV.<sup>2</sup> Such delays come at the expense of millions of people who cannot afford medicines when pharmaceutical companies can use their monopolies to charge high prices.

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<sup>1</sup> WTO Ministerial Council, *Declaration on the TRIPS Agreement and Public Health*, WTO Doc. WT/MIN(01)/DEC/2, 14 November 2001, online: [https://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_trips\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm).

<sup>2</sup> B. Waning et al., "A lifeline to treatment: the role of Indian generic manufacturers in supplying antiretroviral medicines to developing countries," *Journal of the International AIDS Society* 2010; 13: 35, online: [www.jiasociety.org/index.php/jias/article/view/17573](http://www.jiasociety.org/index.php/jias/article/view/17573).



**The potential negative impact of the TPP is exacerbated by the inclusion of an investor-state dispute settlement (ISDS) clause.** Until now, ISDS provisions in trade agreements have not generally extended to defining “investment” as including intellectual property rights. Now, under the proposed TPP, they are explicitly included. This presents a new route for pharmaceutical companies to try to derail laws or regulations that interfere with their expected profits. The unprecedented Eli Lilly lawsuit under NAFTA, while fortunately unsuccessful, highlights the dangers of including yet more such measures in the TPP, and this time with the explicit extension of ISDS provisions to include intellectual property claims.<sup>3</sup>

In its potential impact, domestically and globally, on access to affordable medicines, the TPP flies in the face of what is needed to respond to major public health challenges raised by both communicable diseases (including HIV, tuberculosis, malaria and others) and non-communicable diseases and health conditions (which represent an even greater, and growing, burden on the populations, health systems and economies of many countries, including developing countries). Instead of accepting the provisions of the TPP as they stand, Canada should instead demonstrate international leadership and honour its repeated commitment to human rights and global health, including access to medicines.

In particular, for any international trade agreement that it is considering ratifying, the Canadian HIV/AIDS Legal Network calls upon Canada to:

- Commit to a full, transparent, independent assessment of the agreement’s impact on human rights, including access to medicines;
- Refrain from ratifying any agreement that contains “TRIPS-plus” provisions that exceed the already-restrictive rules on intellectual property that have been adopted at the WTO; and
- Refrain from ratifying any agreement that extends the damaging “investor-state dispute settlement” system to cover intellectual property or other laws and regulations affecting pharmaceuticals, as this would enable pharmaceutical companies to impede regulation of this sector in the public interest.

Respect for human rights, which includes providing access to affordable medicines, has a crucial role to play in saving millions of people from dying of AIDS and preventing millions of new HIV infections. This public health imperative is reflected in the global Sustainable Development Goals agreed by all countries, including Canada, at the United Nations. But these goals will never be achievable as long as governments continue negotiating new trade agreements that raise barriers and keep life-saving medicines priced out of reach. Canada should not resuscitate any such provisions from the TPP, nor should it agree to them if proposed by other countries.

Sincerely,



Richard Elliott  
Executive Director

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<sup>3</sup> D. Tencer, “Eli Lilly’s NAFTA Lawsuit Threat Against Canada Prompts Calls For Review Of Investor Rights,” *Huffington Post*, 4 September 2013, online: [www.huffingtonpost.ca/2013/09/04/eli-lilly-lawsuit-nafta-canada\\_n\\_3861869.html](http://www.huffingtonpost.ca/2013/09/04/eli-lilly-lawsuit-nafta-canada_n_3861869.html). See also the documents available the website of the Department of Foreign Affairs, Trade and Development: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/eli.aspx?lang=eng>.