Submission to the Standing Committee on International Trade, Parliament of Canada

Public Hearings on the Trans-Pacific Partnerhip (TPP)
Windsor Ontario May 12, 2016

Ontario Health Coalition
15 Gervais Drive, Suite 604
Toronto, Ontario M3C 1Y8
Tel: 416-441-2502
Email: ohc@sympatico.ca
www.ontariohealthcoalition.ca

There is widespread consensus among experts that the trade opportunities in the Trans-Pacific Partnership (TPP) agreement are small to negligible. In fact the term "trade deal" is a misnomer. The TPP is much more a corporate control arrangement over government policy than it is about increased trade. As such, if this Standing Committee and our Parliament are acting in the public interest, then you must recognize and act upon the urgent concerns of public interest groups regarding the TPP's proposed constraints on our government's ability to set policy not strictly related to trade at all; in particular, the new chapters in the TPP that contain implications regarding the regulation of the pharmaceutical industry and drug prices.

It is our testimony that the changes proposed in the TPP would increase costs for both public and private purchasers of pharmaceuticals. They would restrict future policy options of our governments for the benefit of brand-name pharmaceutical companies' profits at the cost of Canadian patients and the public interest.

Public health care and trade experts are united in warning that the TPP's most significant detrimental impact for Canada's health care system will be on drug costs. Higher drug costs impact our entire health care system not only by reducing access to needed medications, but also by placing competing demands on health care funding thereby increasing pressure to cut other publicly-funded health care services and accelerating privatization, upping out-of-pocket costs for patients, and exacerbating inequities and suffering when people are facing the aging and illness.

Imposing unnecessary costs and unpredictable risks on the Canadian health care system in exchange for a negligible increase to our GDP is a bad deal for Canadians and Ontarians. As health and trade policy expert Scott Sinclair warns, "The increased burden on taxpayers and consumers from higher drug costs alone would likely exceed the full savings to Canadian consumers from the TPP's elimination of tariffs on imports into Canada, undercutting one of the chief arguments for liberalized trade."

In addition, it is a deeply-held principle among Canadians that we have an obligation to those less fortunate than ourselves. International humanitarian organizations are speaking with one voice when they warn about the TPP's damaging impact on access to medications for patients in some of the world's poorest nations.

Drug Costs in Canada and Ontario

Canada's drug costs are already too high. According to the most recent data available from the Canadian Institute for Health Information (CIHI), Canadians pay the second most per person for drugs of all OECD countries, second only to the United States, and our costs are significantly higher than the average.

Across Canada, drugs are paid for primarily by private health insurance or directly by individuals. According to CIHI, in 2014, 35.7% of prescribed drug spending was financed by private insurers and 22.2% was paid out of pocket by households. The remaining 42.1% was paid through public drug plans.

The public share of prescribed drug spending varied among provinces, ranging from the lowest in New Brunswick (31.7%) and British Columbia (34.5%) to the highest in Quebec (45.8%) and Saskatchewan (51.1%). Ontario was close to the average at just over 40%.

So, the burden of higher drug costs falls to private sector insurance plans, patients' household incomes and public drug coverage plans.

Access to Medications in Ontario

In Ontario, as public hospitals are cut and technology changes, patients are increasingly left to a patchwork of plans and systems that are hard to navigate and leave many with high out-of-pocket costs.

For example, most patients who needed chemotherapy in the past, received their cancer drugs at a hospital clinic and the costs were covered through public tax dollars. But an increasing number of cancer drugs are oral and can be taken at home. Today, the Canadian Cancer Society reports that half of cancer drugs are taken at home and they often cost thousands of dollars per month. As patients are moved out of hospital, they are moved out from under the umbrella of public medicare, without comprehensive coverage that includes their treatment costs. Coverage is inequitable across the country. It is generally reported that the western provinces have more comprehensive coverage for cancer treatment than does Ontario.

In addition to Ontarians with cancer, those with HIV, Crohn's disease, arthritis and other conditions face high costs and inadequate coverage.

Some patients have private insurance through their workplace. In these insurance plans, deductibles and co-payments are on the rise and caps limiting total amount that will be paid out are increasingly used. For those without a private plan, or who face co-payments of various sorts with their private plans, Ontario has the Ontario Drug Benefit (for seniors and those on social assistance), the Trillium Drug Program (a means-tested program for those with high drug costs), and the Exceptional Access Program (which operates as a type of appeal for those drugs not covered under the ODB/Trillium).

Media reports confirm what we hear at the Ontario Health Coalition about this patchwork of programs. For those who access the Trillium Drug Program: waits of up to 8 weeks or sometimes longer for applications to be processed; newer cancer drugs and biologics are not covered; deductibles are based on household income whether or not that income is shared; deductibles amount to thousands of dollars a year; application processes are onerous and people have problems accessing the plan. In addition, many do not know about the program at all. The Exceptional Access Program requires detailed submissions from physicians, takes time, and patients are denied in some cases despite the fact that there physician has informed them that they need the drug in question. For these programs, patients can be forced to pay thousands of dollars for drugs – sometimes tens of thousands of dollars. In the worst cases, families have been put into bankruptcy, sold their assets, or looked into legal separation in order to deal with drug costs.

The Wellesley Institute published a 2015 report on inequitable access to health benefits. Using Statistics Canada data and recent studies published in peer-reviewed journals, they found:

- In Ontario, about 9 percent of people do not fill medical prescriptions because of cost.
- One-third of paid employees in Ontario do not have employer-provided medical or dental benefits.
- People with low earnings have lower levels of employer-provided health benefit coverage than those with higher earnings, with fewer than one in five people earning less than $10,000 receiving benefits through their employer compared with more than 90 percent of people earning over $100,000.
- Men have are more likely to have employer-provided benefits than women.

In our own experience at the Ontario Health Coalition, we have found that drug coverage is subject to wide disparities based on geography, income, gender and age. Farmers often do not have health benefits, and this extends to rural communities in general. And, as in the Wellesley Institute's findings, lower income people have fewer health benefits and women have fewer health benefits than men. Given the racialized inequities in income in our province and country, we can surmise that racialized Ontarians, aboriginal, First Nations and Metis communities also have less coverage. With precarious work dramatically increasing in our province, the problems attendant with lower incomes and less health benefits are growing. Younger workers generally do not have benefits.

These groups will be most impacted by higher drug prices. So too will all Ontarians on public and private drug plans.

The TPP and Health Care

The TPP contains five chapters that specifically relate to medicines: Technical Barriers to Trade (Chapter 8); Investment (Chapter 9); Intellectual Property (Chapter 18); Transparency and Anti-Corruption (Chapter 26); and Dispute Settlement (Chapter 28).

As Dr. Joel Lexchin reports, the TPP could have profound effects on the criteria that Canada uses to decide on drug safety and effectiveness, how new drugs are approved (or not) for marketing, post-market surveillance and inspection, the listing of drugs on public formularies, and how individual drugs are priced in the future.

Chapter 8 Technical Barriers to Trade & Chapter 25 Regulatory Coherence

- Enables the other 11 TPP countries will have the opportunity to intervene in Canadian regulatory requirements for drug marketing or post-market monitoring of drug safety and effectiveness.
- Could limit Health Canada's future ability to ensure that approved drugs must show medical need, that is, that they be more effective than existing treatments; something that would help to contain costs and improve efficacy in a national pharmacare program.
- Creates pressure for faster regulatory approval for drugs by Health Canada, despite evidence that faster approvals can lead to poorer drug safety for patients.
- Enables the brand-name pharmaceutical industy to appeal decisions by Health Canada to deny a drug approval. Note: there is already an internal appeal process but if Health Canada were to create an external process, this chapter allows industry representation on that appeal panel, despite the conflict-of-interest.
- Does not require that inspections of drug manufacturing facilities be made public; allows governments to keep these reports secret, despite the overriding public interest in transparency.

Chapter 9 Investment & Chapter 28 Dispute Settlement

- Allows foreign investors to sue the Canadian government for actions taken by federal, provincial, or local governments that are alleged to violate the substantial rights for corporations contained in the treaty's investment chapter. These suits are heard by tribunals that have been severely criticized in Europe and internationally for conflicts of interest, enormous discretion over what is and is not a legitimate government measure to protect the public, no appeal rights

for sovereign governments, and rulings that favour corporations over the public interest. They have undermined democratic processes, and in some cases, national legal systems.

- This creates new potential problems for regulation of pharmaceuticals and efforts to control drug costs because the TPP's investment chapter explicitly covers intellectual property rights (this includes patents on drugs) and contains no general exemption for matters related to public health. The investment chapter also cross-references the WTO TRIPS Agreement. This means that drug companies would be able to sue for large cash settlements on creation, limitation or revocation of intellectual property rights (which they do not currently have the power to do under the WTO – World Trade Organization – TRIPS Agreement) restricting governments' abilities to ensure access to affordable medicines.

Chapter 18 Intellectual Property

- Limits governments' ability to ensure that private health information and other data held by private companies is stored in our country. Concerns include the provisions in the U.S. Patriot Act that allow U.S. authorities access to corporations data in the United States.
- Gives additional market exclusivity (patent protection) for brand-name pharmaceutical companies for an unspecified length of time, beyond the currently required 20-year patent term. Carleton University professor Marc-André Gagnon estimates that if the TPP were implemented in Canada today it would increase the average market exclusivity for patented drugs by 287 days. By further delaying the availability of cheaper generic medicines, this would result in an annual cost increase of $636 million, or 5% of the annual cost of patented drugs in Canada, beginning in 2023.
- Gives brand-name drug companies wider use of expedited review processes, despite the negative impacts on drug safety.
- Increases costs for drugs both in Canada and internationally, including in developing countries such as Vietnam and Malaysia.

Conclusion

Extending drug patent terms is the worst part of the TPP. This would increase costs for patients both here and in developing nations that are signatories to the scheme. Other serious health care impacts include potential limits on our government's ability to ensure drug safety and effectiveness, public formularies, and drug pricing.

There are other aspects of the TPP with which health care advocates – and indeed, all Canadians -- should concern themselves but limited time and space means that we can give them only perfunctory attention. The safety of our food, and that of others around the world, and our domestic governments' abilities to regulate it are impacted by the TPP. Protection of privacy, including potentially health records, is also impacted by the TPP. Other economic impacts that would exacerbate income inequality and give corporations rights to seek ever higher profits while making more precarious the workforce, these have longer-term, but undeniable impacts on population health.

At its base, proponents of the TPP must answer to Canadians these questions: why should Canadians pay higher costs to increase the profits of brand name pharmaceutical companies? How is it conscionable that the poor, the sick and the dying bear the brunt of a new international corporate-rights regime? (Médicins Sans Frontières concludes, "although the text has improved over the initial demands, the TPP will still go down in history as the worst trade agreement for access to medicines in developing countries.")

The evidence of high drug costs in Ontario and in Canada as a whole, and the wide consensus about the flaws in the TPP show that Canada does not need the TPP. It needs a national comprehensive public drug coverage program.