BRUCE GREY OWEN SOUND

NPD NDP

# Trick or Treaty?

Submission of the Bruce-Grey-Owen Sound NDP Electoral District Association to the Commons Standing Committee on International Trade regarding the Trans-Pacific Partnership

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Authored by David McLaren
40 Sydney Bay Rd
Neyaashiinigmiing, ON
N0H 2T0
519-534-4107
david.mclaren@utoronto.ca

**The Bruce-Grey-Owen Sound Electoral District Association** of the New Democratic Party is responsible for nominating candidates for federal and Ontario elections and generally conducting the business of the Association in the riding. Currently, our principle concern is the poor state of the region's economy, particularly the precarious work that constituents must accept now that manufacturing jobs have left the area. We have studied the impact of precarious work on constituents and note that it has significant adverse consequences for people's health and their ability to participate in the economic and social life of their communities. This is a problem common to many rural communities in Canada. We have hopes that 'retooling' for an innovative economy will alleviate this situation; but we fear that the ratification of the Trans-Pacific Partnership will put that goal out of reach.

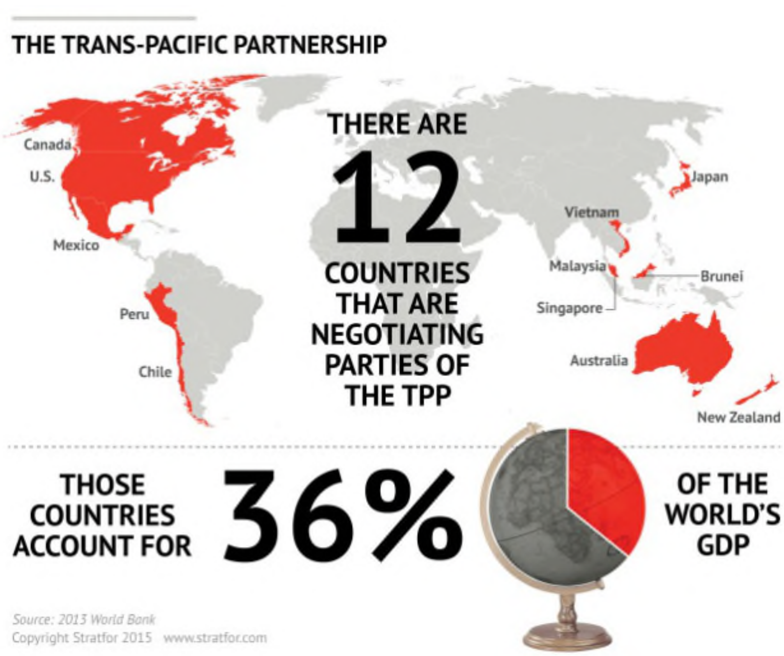
# Trick or Treaty?

***Bruce-Grey-Owen Sound NDP submission to the Standing Committee on International Trade on the Trans-Pacific Partnership Trade Agreement***

Think ‘property.’ Now think ‘treaty’ … as in those instruments that transferred land from people who belonged to it, to people to whom it then belonged. There is a difference, after all, between people who belong to the land and people who simply own the land. Treaties were a pretty good deal for Canada, not so much for First Nations. (A stony outcropping of land called the Bruce Peninsula was evaluated not so long ago as being worth some $50 billion—just imagine what the rest of Canada is worth.)

Now you’re in the proper frame of mind to consider the Trans-Pacific Partnership (TPP). Although it’s not land that’s at stake but property of a different sort — our intellectual property and our Canadian way of running a nation.

The TPP is a massive trade and investment treaty that dwarfs, but does not replace, NAFTA in its scope. It’s the rule book for many things: investment (a troubling chapter that allows foreign companies to sue countries if national laws get in the way of corporate profits), textiles and apparel, customs administration, financial services, entry for business persons, electronic commerce, intellectual property and more.




Put aside for the moment that the deal takes another bite out of the Canadian market for our dairy farmers. They’ll lose some 3% of market share and we’ll lose some tax revenue. That loss doesn’t count the $4.3 billion worth of compensation the government has promised to dairy farmers or the $1 billion for innovation in the auto industry — if there's one left after the TPP. The benefit of the TPP to the Canadian economy? According to former Trade Minister Ed Fast: $3.5 billion, and to the current government: $4.3 billion.

Even the US government seems to doubt the benefits of the TPP. Its International Trade Commission (ITC) issued a report in May 2016 that anticipates the economic benefit for the US will be tepid, but the impact on workers will be harsh.

And let's not look at the 58,000 lost jobs some economists are forecasting, partly because Japanese cars and trucks will be allowed for sale in Canada with much higher 'foreign content' (parts made outside the country) than previously.

By the way, before the North American Free Trade Agreement came into effect (and China entered the WTO), we had a trade surplus in the auto sector of over $14 billion a year. Now, owing to the loss of jobs to Mexico and of business to the Great Recession, we have a deficit of $10 billion. We are no longer the Americans' favourite trading partner — China is, and Mexico is second. NAFTA was a pretty good deal for multinationals and a posse of trade lawyers, not so much for American and Canadian auto workers.

As for the WTO, a dispute brought by Japan and the EU through the WTO in 2012 stripped Ontario's ability to insist, under its green energy plan, that energy suppliers buy their equipment from Ontario companies. But let's not look at the woeful record of Canada's experience with trade disputes.

And let's not look at all the chapters in the TPP that deal with just about every aspect of the sovereign life of a country: financial services, travel for business, cross-border trade in services, telecommunications, government procurement, state-owned enterprises, labour, environmental protection, support for business, regulatory coherence … all with the objective of ensuring that we don't create "unjustified obstacles to trade." If a corporation decides that a law or regulation impacts on their ability to trade, there is a dispute settlement process (chapter 28) that "investors" can use to sue governments for loss of trade.

After all, that was a major sticking point for Wallonia — the region of Belgium that resisted the siren song of the CETA. It's important to put that concern into perspective. It's not that people here or in Europe are opposed to trade; it's that we are objecting to corporate control over our lives and the erosion of public services, and the poor-paying service jobs and the inequality that seems to follow global trade deals like disease followed the conquistadors.

## *Intellectual Property provisions will lock in corporate Canada's poor performance*

Let's look only at the section of the TPP that deals directly with intellectual property or IP. That's Chapter 18. You can find it and the rest of the text of the TPP at the Canada's Global Affairs website. The dozens of other trade agreements we've signed are here as well.

The TPP doesn't replace any other agreement — it adds its own rules to over a dozen other agreements on intellectual property alone, including one under the WTO which, in 2000, forced Canada to change its patent law with respect to the manufacture of generic drugs. This decision ruled in favour of a challenge from the US that Canada, by allowing generic drug companies to stockpile product six months before the expiry of their patents (so we could cut costs to the health care system and ensure an uninterrupted supply), violated the international agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Chapter 18 of the TPP goes further than TRIPS. It sets the ground rules for the IP industry in any country that signs on. And those rules pretty much dictate how nations are to deal with everything from songs on the Internet to prescription drugs to GMOs. It even includes — and First Nations should be aware of this — a section on traditional knowledge, how to acquire it and how to patent it.

The TPP was drafted in the US with the active and ongoing participation of American multinationals. Not surprisingly, the rules tilt the playing field in favour of the way Americans do business.

Nothing, it seems, has escaped the attention of whomever it was that drafted Chapter 18. It even lays down the law — literally setting out the sort of punishments that we will have to levy against those who violate its terms. If there's a dispute — if a foreign multi-national doesn't like how it's being treated — it will go, not to Canadian courts, but to a secretive trade tribunal for arbitration. All this helps to cement corporate control of our economy.

This is no small matter. The IP industry (which include the Googles, and Facebooks, and Apples of the world, as well as Big Pharma corporations and emerging Financial Tech companies) is about the only one that's growing, at least in the US. Manufacturing is accounting for less and less of the GDP there, and here.

**The economies of rural communities in Canada have been devastated by the loss of manufacturing. Bruce-Grey-Owen Sound's economy now relies mostly on agriculture and a poor paying service sector. As the region begins to look for other economic drivers, it is considering the innovative economy — small start-ups that can grow by providing creative services or products. However, the TPP with its ground rules on IP and penalties, threatens to stifle this initiative even before it gets started.**

As things stand now, Canada exports commodities like oil and minerals, but we import intellectual property. With commodities tanking in a global slow-down, we have to turn our economy toward IP and innovation.

And there's the rub. As Jim Balsillie, the co-founder of the company that gave the world the Blackberry, points out in a recent article for the *Globe and Mail*, we are not prepared to compete in the IP game, especially one that's rigged in favour of US corporations, as the TPP will certainly do.

He quotes the data to back up his claim. In general, Canadian companies are not very good at commercializing innovation. The title of his article asks the right question: "Will TPP mean Protection — or Colonialism?" In other words, this treaty is a trick.

Certainly, Canada's poor record of innovation is something that others have noticed — the Conference Board of Canada, for example, which gives us a C in comparison with other countries (see table below). A C in innovation is not going to get us very far if we go head to head with the USA, as we surely will have to if we want to rebuild our economy.

**REPORT CARD**

Innovation

| | | |
|---|---|---|
| 1 | Sweden | A |
| 2 | Denmark | A |
| 3 | Finland | A |
| 4 | U.S. | B |
| 5 | Ont. | B |
| 6 | Switzerland | B |
| 7 | Netherlands | B |
| 8 | Que. | B |
| 9 | Austria | B |
| 10 | B.C. | B |
| 11 | Norway | B |
| **12** | **Canada** | C |
| 13 | Germany | C |
| 14 | Japan | C |
| 15 | Alta. | C |
| 16 | Australia | C |
| 17 | Belgium | C |
| 18 | U.K. | C |
| 19 | France | C |
| 20 | N.S. | D |
| 21 | Sask. | D |
| 22 | N.L. | D |
| 23 | Man. | D |
| 24 | Ireland | D |
| 25 | P.E.I. | D– |
| 26 | N.B. | D– |

Note: For details on methodology, see the "Methodology & Data" section of this website.
Source: The Conference Board of Canada.

In an earlier piece, Mr Balsillie quotes a lead strategist for one of the world's most valuable technology companies: "We don't sue Canadian companies until they start to matter to us. The money is not worth it when they're small and we don't want to look like a bully. We wait until they get big enough, then we go after them. And we kill them."

Although innovation is the key to success for Canada's manufacturers, others are confirming Mr Balsillie's diagnosis. A Deloitte poll of 1200 companies across Canada reveals that just 11% are "truly courageous."

Canadian industry invests less in machinery, equipment and, crucially, training, than do comparable countries. Their conservative nature might have helped get them through the Great Recession, but it's not helping lift the country out of the doldrums (1.3% growth this year *vs* 3% in global growth).

The report concludes. "This lack of courage has serious implications for these organizations and for the Canadian economy overall." Turning ideas into industry is the hinge on which future economies will swing into gear. Unhappily, it looks as though Canada's corporations aren't up to the task.

### *There are good reasons to fear ISDS will erode our sovereignty*

An excellent video from Germany concisely and accurately lays out that nation's worries about Investor State Dispute Settlement (ISDS) provisions in 'free trade' agreements: https://www.youtube.com/watch?v=YV2NZ9MQh0w.

The principal worry is that trade agreements with ISDS chapters (Chapter 11 in NAFTA and Chapter 28 in the TPP) pretty much lock a country into doing business in a certain way. If, for example, a nation wants to change the packaging of cigarette cartons to reflect their health hazards, a company (the Investor) can sue the nation (the State) for erecting a barrier to trade. The dispute doesn't go to the nation's courts, it goes into the secret and very lucrative (for lawyers) Dispute Settlement process laid out in trade agreements.

Canada has been successfully sued by a number of corporations for laws and regulations we have tried to pass that were deemed to interfere with trade. These suits and complaints have come courtesy of a variety of treaties already, including the NAFTA (the North American Free Trade Agreement) and the WTO (World Trade Organization).

We have been sued by corporations more times under NAFTA's ISDA chapter than either the US or Mexico and we've had to pay out some $172 million. Perhaps not surprisingly, considering who wrote the rules, the US has yet to lose a Chapter 11 case.

As we've seen, the WTO, applied the General Agreement on Tariffs and Trade to force Ontario to drop its requirement that renewable energy equipment be manufactured in the Province.

So much for building an innovative, made-in-Canada renewables industry. It's hard to imagine a clearer signal that trade agreements are perhaps not the way to rebuild our economy. In fact, most tariffs are now so low that they are really not an impediment to free trade. What corporations are after now is the non-tariff barriers. That is, the laws, policies and practices that nations use to govern — the environmental or health or economic instruments that, heaven forbid, interfere with how companies do business.

The TPP is not the only trade treaty on the horizon. The TISA (Trade in Services Agreement) is another US initiative. It is being negotiated among 23 members of the WTO. Counting the 28 countries of the European Union who sit as a block, some 50 countries, including Canada will be subject to the TISA.

Critics see the TISA as an attempt to privatize services now provided by most governments such as education and health care. It does seem as though the US is looking for foreign markets for its private service sector. For example, the provision on 'National Treatment' states that once a country lowers trade barriers for any service, as it will be committed to do under TISA, it cannot raise them again. That might protect corporate profitability, but the public good, not so much.

However, the EU has so far been firm in asserting that no trade agreement will prevent its governments, at any level, from providing services in water, health, education and social services. And companies outside the borders of the EU will not be allowed to provide publicly funded healthcare or social services. (But the door may remain open for privately run penal and education services and it will open to companies who set up shop in the EU.)

These trade treaties have less to do with a fair exchange of goods and services than they do with protecting multinational corporations' bottom lines. But it looks like the cost of doing business in the manner these treaties dictate will be paid with our democratic right to tell our governments how to govern.

ISDS chapters allow corporations to sue nations, but there is no way for nations to sue corporations. In other words, ISDS provisions such as Chapter 28 of the TPP, lock in investor rights at the expense of nations' rights. That's one reasons why some thoughtful economists are having trouble swallowing the TPP. Nobel laureate Joseph Stiglitz makes no bones about his opposition to the TPP on that basis. And he has written to negotiators about his particular concern that the TPP will lock in measures that will weaken public health care — for example: extending patent terms and lowering the threshold for patentability of medicines (which will make drugs more expensive for longer periods of time), making surgical procedures patentable and mandating monopolies of 12 years on test data for biologic drugs.

This cannot stand. There is a difference, after all, between those of us who live in Canada and those who are here merely to make money. We don't vote for Google or Apple or Pfizer; we vote for people to represent our interests in the Parliament in Ottawa.

That's hard for our MPs to do when trade agreements (including the TPP) are negotiated in secret; given the complexity and breadth of most trade agreements (especially the TPP); the relatively short timeline for ratification; and the sovereignty-stripping provisions of secret trade panels that will decide on disputes between national interests and corporations.

## *Conclusion*

Since 2001, Canada's exports to the world have stalled. Our trade in goods and services is 20% of the OECD average — 33rd out of 34 countries.

Given …

- Canada's poor performance on international trade,
- our experience with being on the losing end of Investor trade suits,
- tariffs have dropped world-wide and no longer present a significant barrier to trade,
- given the very real concerns about the power we will hand to corporations,

It is perhaps time to pivot from international trade agreements that lock us into unhelpful economic and political straight-jackets and move toward national policies that will build an innovative economy — one that will make goods and provide services the rest of the world will want to buy.

Given that our manufacturing sector remains sluggish in spite of our low dollar and the US recovery, this pivot becomes even more important if the current government wants to get its own population back into well-paying jobs.

**The first step in this process would be to refuse to ratify the Trans-Pacific Partnership. The second step would be for the federal government to create an ecosystem in which *Canadian* innovation can mature and bear fruit.**

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