

Submission to the Standing Committee on International Trade

Re: Trans-Pacific Partnership and Postal Services

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For the reasons set out below, the Trans-Pacific Partnership (TPP), if implemented, will put at serious risk the ability of Canada Post to continue to provide high quality mail and package services to Canadians regardless of where they live, and to remain a financially viable public service. CUPW also shares the concerns that many trade unions and civil society organizations have brought forward about the TPP.

Therefore, CUPW urges the federal government to radically reform or reject this regressive international trade agreement

Canada's Universal Postal System Under the TPP

The TPP is not the first trade agreement to undermine the policy autonomy of the Parliament of Canada and the role of the Canada Post Corporation ("Canada Post") in respect of postal and related services.

Canada is already subject to overlapping rules affecting postal services in the General Agreement on Trade in Services (GATS) and the North American Free Trade Agreement (NAFTA). The TPP would however, significantly exacerbate the constraints imposed by these trade regimes, and put the future viability of Canada Post at serious risk.

This is because TPP rules concerning postal services closely reflect the agenda of transnational courier and express delivery companies (the courier industry) that has lobbied and litigated to limit the role of public postal services. Apparently supportive of this corporate agenda, the Harper government declined to exempt Canada Post services from TPP rules as several other TPP nations have done.

The Attack on Public Postal Services by the US courier industry

Companies like UPS and FedEx, have for years engaged in a multi-pronged attack on public postal services by: (1) lobbying for trade rules to curtail or even eliminate the role of public postal services in providing express delivery and courier services; (2) engaging in strategic litigation against the U.S. and German postal services; and (3) initiating a NAFTA investor-state claim against Canada, *UPS v. Canada*. Fortunately, the industry has, at least

to date, failed in these efforts.

Recently however, and with the support of U.S. trade officials, the industry has been able to influence a series of preferential trade agreements (PTAs) between the U.S and other countries. As described by a counsellor in the Trade in Services Division of the WTO Secretariat: these new trade rules represent a “great victory for the United States” given the fact that few countries had acceded to similar demands in GATS negotiations.

As described below, rules very similar to those in PTAs have now been incorporated into the TPP by Annex 10-B of the Cross-Border Trade in Services Chapter, and in Chapter 17 concerning State-Owned Enterprises and Designated Monopolies (SOEs).

These TPP rules are testament to the success of courier industry lobbying efforts. As the U.S. Trade Representative put it, they “address the unique challenges private suppliers face when competing with national postal entities in express delivery” and include “new commitments that address longstanding issues for U.S. services suppliers.”

In short, the TPP represents a high water mark for efforts by the courier industry to establish international trade rules to limit the role public postal services.

Moreover, the challenge of such international trade rules arrives at a time when public postal services are under increasing pressure to fulfill their service mandates as demand for traditional letter mail services declines. Together, these developments threaten Canada Post’s ability to fulfill its “universal service obligation” under both Canadian and international law.

Canada’s obligations under international law (The Universal Postal Convention), include having to ensure that all “users/customers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices” (Article 3.1). Domestically, under the Canada Post Corporation Act, Canada Post must provide high-quality, affordable postal and related services to all Canadians in all regions of the country by means of a

government institution that is accountable. (s. 5(2)(b)).

To meet these mandates while remaining financially sustainable, Canada Post has adopted a strategy of providing services that complement its primary letter mail obligations – namely express delivery services (i.e. Xpresspost, as well as those of its subsidiary, Purolator). Thus, while letter mail volumes decline, the opposite is true for express delivery and courier services. It is in respect of these non-letter mail service areas and the integrated services model that Canada Post has adopted, that the TPP poses the most serious threat.

The Specific Threats TPP Poses to the Future of Canada Post

In light of these developments, CUPW commissioned a legal opinion by the firm Goldblatt Partners to assess how the TPP, if implemented, would impinge upon a) public policy and law concerning postal services, and b) the current and future activities of Canada Post. That opinion describes the most important consequences of the TPP as follows:

1. TPP rules concerning “Cross-Border Trade in Services” include a detailed annex on “Express Delivery Services” which would impose far more explicit constraints on government authority concerning postal services and the activities of Canada Post than do those in NAFTA or the GATS. These new rules would not only limit the ability of Canada Post to expand current services such as those of Xpresspost and its subsidiary Purolator, but would threaten its ability to maintain its current business model of integrated express delivery and letter mail services.
2. TPP rules concerning SOEs would also expand and make more explicit similar constraints in NAFTA and the GATS on the conduct of Canada Post in meeting its mandate to provide universal postal services to Canadians while maintaining a viable business model that includes express delivery services.
3. The TPP would expand the scope for investor-state dispute settlement (ISDS) - the most pernicious feature of new ‘trade’ liberalization rules and one that many nations are now attempting to curtail. In so doing, the TPP raises the spectre of another protracted investor-state claim

challenging the activities of Canada Post, similar to the NAFTA UPS v. Canada case, but this time buttressed by TPP provisions concerning SOEs and express delivery services, both of which disparage the integration of monopoly (letter-mail) and commercial (express delivery) services that is at the heart of the Canada Post business model.

4. Given the efforts by and demonstrable success of the courier industry in shaping the formulation of TPP rules, it is prudent to anticipate the aggressive use of the regime to promote its interests. While this may ultimately result in trade challenges and investor claims, the more pervasive impacts will be to chill government reforms concerning postal services as industry lobbyists will be quick to point out TPP constraints.

5. While TPP rules present no immediate or direct threat to the letter mail mandate of Canada Post, they impose significant constraints on its ability to maintain a business model that depends upon the integration of express package, courier and letter mail services.

6. TPP rules would also establish barriers limiting Canada's options for empowering Canada Post to respond to new challenges and emergent opportunities in the marketplace. Given the importance of courier and express delivery services to the Canada Post service model, and the vital role that innovation plays in the success of any business entity, it is not unreasonable to regard the TPP as a threat to the future of Canada Post.

The opinion also explains that Canada could have preserved Canadian policy options concerning postal services and protected Canada Post from further challenges and investor-state claims – but it chose not to do so.

Including additional protections for domestic postal systems was viewed by several states as necessary for their national interests and they availed themselves of this opportunity but Canada did not. In consequence, TPP rules would expose Canada and Canada Post to the restrictive rules described above, which may give rise to both state-to-state disputes and investor-state damage claims.

Finally, CUPW is aware of no putative benefits to be gained by Canada in

respect of commitments pertaining to postal or courier services.

In an economic environment in which advantage goes to the enterprise that can innovate and respond to new market demands, such as those being driven by e-commerce, the effect of the TPP rules is not only to lock public sector service providers into the status quo, but through new rules on express delivery services, SOEs and monopolies, and the “ratchet mechanism” - to ultimately reduce or even eliminate their capacity to compete in the new marketplace.

In consequence, if the TPP is ratified, Canada will effectively be precluded from ensuring that Canada Post is able to maintain a universal and public model for providing all Canadians, regardless of where they live, with the postal and express delivery services they need.

CUPW believes that the TPP needs to be radically reformed in many areas, or rejected. On postal matters, it recommends that the federal government eliminate ISDS and take an Annex II reservation for postal services and a reservation from Chapter 17 under Annex V.

The CUPW represents about 51,000 workers throughout Canada, many of them employees of Canada Post.