ACME Association Canadienne des Médecins pour l'Environnement
CAPE Canadian Association of Physicians for the Environment

CAPE Statement on The Transpacific Partnership to Canada's Committee on International Trade
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Prepared and delivered by Dr. Courtney Howard, CAPE Climate-Health Board Lead via videoconference from Yellowknife

Good morning, and thank you for inviting me to speak to the Committee this morning on this very important topic. My name is Dr. Courtney Howard, and I am an Emergency Physician in Yellowknife and the Climate-health Lead Board Member of the Canadian Association of Physicians for the Environment (CAPE).

CAPE is an advocacy and educational organization. We are Canada's only national physician's organization with the goal of protecting human health by protecting the planet.

I received the invitation to speak only 3 days ago, so my comments will rely on an academic analysis of the text done by the Canadian public health policy experts most published in this area, which I will interpret through the lens of implications for environmental health.

CAPE is concerned that the TPP has the potential to limit an optimal public health response to climate change, which is the "greatest threat to global health of the 21st century"(1) according to the World Health Organization. We are also concerned that the TPP will limit public health response to emerging scientific evidence on environmental health, particularly with regards to the ability of decision makers to invoke the precautionary principle in policy-making.

Ecological Determinants of Health
When we think of health we often think of hospitals and the healthcare system—but increasingly, the social and ecological determinants of health are recognized to have much greater impact on overall health status. (Which I have to say is a very frustrating thing to realize if you just spent 12 years becoming an emergency physician)

The Public Health Association of Canada's 2015 discussion paper on the Ecological Determinants of Health states, "There is a growing recognition that the Earth is itself a living system, and that the ultimate determinant of human health (and that of all other species) is the health of the Earth's life-supporting systems."(2) Current temperature trends pose a real risk to continued global organized civilization.(3)

Overview of the Health Impacts of Climate Change

The WHO calculates, in what is considered in the literature to be a very low-ball estimate, that, between 2030 and 2050, at least 250,000 additional people worldwide will die prematurely each year as a result of climate change from malnutrition, heat stress, diarrhea and malaria alone.(4) I spent six months in 2010 resuscitating children with severe malnutrition on a *Médecins Sans Frontières* project in the Horn of Africa. These deaths are real.

In Canada, we are already experiencing health impacts from climate change including an increase in severe wildfires with consequent respiratory health burden(5, 6) and stressful evacuations;(7) the spread of Lyme disease(8), and mental health and food security impacts secondary to rapid landscape changes in Canada's rapidly-warming arctic regions(9), amongst other impacts.

I am speaking to you from Yellowknife, a place which is already over 2 degrees C warmer than it was in the 1950's.(10) Part of my patient population lives in Inuvik, which is already 3 degrees C warmer.(10) During last year's spring thaw, I had two patients spontaneously mention climate change to me as having contributed to the reason for their Emergency visit—one had had his snowmobile go through the ice on a well-known river crossing, and had been thrown near the bank, where ice shards lacerated his scalp. The other was worried his son had gone through the ice, went out to look for him in the wee hours, and slipped and broke his hip on the river ice.

Worldwide, additional impacts include the contribution of climate-related drought to the conflict in Syria(11) with its consequent disastrous loss of life and challenging international refugee flows. As warming accelerates beyond the 2 degree C target, basic human needs will increasingly not be met, and health systems themselves will be affected.(3)

Climate targets are public health goals—and they must be met.

Public Health Response Required to Mitigate Climate Change—and its Relationship to the TPP

Leaving it in the ground

We know that we need to leave at least 80% of economic fossil fuel reserves in the ground in order to keep global surface temperature warming under 2C, and that, according to an article in the journal Nature in 2015, "development of resources in the Arctic and any increase in unconventional oil production are incommensurate with efforts to limit average global warming to 2 °C."(12)

As the North American Free Trade Agreement does, the TPP contains Investor State Dispute Settlement Provisions (ISDS), which allow corporations to sue governments for lost profits in the case of a change in the regulatory environment. Investor State Dispute Provisions in NAFTA have resulted in TransCanada Corp seeking $15 billion US in

damages, subsequent to US rejection of the Keystone XL pipeline.(13) Similarly, Lonepine Resources is seeking $118.9 million USD against the Government of Canada subsequent to its exploration license, located in the St Lawrence River, being revoked following the coming into force, on June 13, 2011, of the Quebec law titled *An Act to limit oil and gas activities.(14)*

The TPP leaves us open to similar corporate challenge to policy changes designed to leave oil and gas in the ground.

Societal low-carbon transition and adaptation: rapid change is required

More generally, we need to be anticipating a period of rapid change—a second industrial revolution—a low-carbon one. To be consistent with the 2C goal of the Paris Accord,(15) we need emissions targets similar to Germany's, which are 55% less than 1990 levels by 2030 and 80-95% less by 2050.(16) This will require here, as it does there—an energy revolution. We require, in fact, a full-scale low-carbon transition, and a major focus on adaptation to buffer the effects of climate change we cannot now avoid. We need a laser focus on elements of survival such as water security, food security and pharmaceutical security.

Technical Barrier to Trade…and to Public Health Policy?

Given the rapid change required of us in the next decades, it is not a good time to be signing something with a Technical Barrier to Trade (TBT) Chapter that requires Parties to "ensure that when developing new "international standards, guides and recommendations … [these] do not create unnecessary obstacles to international trade" (art.8.5.3). "(17) (18) Labonte and Ruckert state that "this TBT provision could effectively place trade concerns ahead of standards intended to protect consumer health and safety or the environment." (17)

Climate change is a health emergency—survival must take priority—not trade.

Who decides whether public health initiatives are "legitimate"?

Initially reassuring, is an Annex to the Investment chapter, which states that "Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations, except in rare circumstances" (Annex art.3.b). Unfortunately, as Labonte and Rucker state, "this still leaves the determination of a 'legitimate' objective and a 'rare circumstance' to the decisions of a tribunal comprised of three investment lawyers with little concern for public interests."(17)

Given that the Lancet says that "tackling climate change could be the biggest global health opportunity of the 21st century"(3)—and that a failure to tackle it will mean that not only health but health systems will be in real trouble by mid to late century---all

mitigation and adaptation maneuvers are public health measures. But will for-profit corporate lawyers on a tribunal interpret them as such? Who will explain all the evidence to them? How are they chosen? Is there any ability to ensure that independent content experts sit on such a panel?

More broadly, this area concerns CAPE for its potential to undermine the ability to invoke the important public health concept of the Precautionary Principle, which states that, "in cases of serious or irreversible threats to the health of humans or ecosystems, acknowledged scientific uncertainty should not be used as a reason to postpone preventative measures." (19)

Emergency physicians often have to begin treatment before a diagnosis is clear in order to avoid real harm being done to patients due to delay in treatment. As an example, almost every person who presents to the ER with chest pain has been given aspirin before I see them just in case they are having a heart attack.

Public health should operate the same way. Our late response to the threats of lead, tobacco, and asbestos provide good examples of the high cost of waiting for complete certainty within the evidence base before acting. Will a corporate lawyer interpret invoking the Precautionary Principle to be "legitimate"…especially when someone's profits are being threatened?

Public health exceptions not previously effective

Labonte and Ruckert point out that, "Governments have responded to these public health concerns by pointing to health exceptions within the TPP as providing adequate protection for regulations concerning health or the environment." (17) However, they go on to show:

> "The TPP's TBT chapter is assumed to be governed by the same provisions as those under the WTO's GATT XX (b), which read: 'Subject to the requirement that such measures are not applied in a manner which would constitute a means conditions prevail, or a disguised restriction on international trade, nothing in by any contracting party of measures: ... (b) necessary to protect human, animal or plant life or health;…' While a potentially useful exception, in the history of its invocation under the WTO dispute system it has been successful only once in 43 cases (France's ban on Canadian asbestos exports), with the largest number of cases failing on the so-called '**necessity test'**."

This is not reassuring.

If public health exceptions are adequate… why the tobacco exclusion?

Additionally—if the rest of the agreement provided the liberty of making whichever policy choices were necessary for public health—why would it be necessary to include a tobacco exclusion?

The TPP contains a voluntary exclusion from investor-state claims against any tobacco control measure. It is 'opt-in,' and Canada is presumed to be likely to do so.(17) We might all ask, as Labonte and Ruckert did, "Why was this exclusion not extended to all non-discriminatory public health measures a country might adopt?"

When one considers the very rapid pace of change of the evidence base—where hydraulic fracturing is concerned, for instance, a full 80% of all of the studies that have ever been done have been done since 2013, and 84% of the ones of public health relevance have shown red flags—(20), and all of the things that have recently emerged as areas of public health concern--BPA, glyphosate, sugar--what are we going to wish we'd included as an exclusion?

TPP, Pharmaceuticals and Climate Change: Rising Drug Costs, Potentially Less Innovation

To cope with the emerging diseases and destabilization of climate change, both Canadians and other global citizens need access to affordable medications and a vibrant R&D system.

We share the concern of *Médecins Sans Frontières* that the TPP will decrease access by extending patents and reducing generic competition.(21) Labonte and Ruckert state: "The TPP includes provisions in the intellectual property rights chapter that go beyond the World Trade Organization's Agreement on Trade Related Intellectual Property Rights (TRIPs) and which lock Canada into extending patent protection through:

- patent term adjustments (extensions) of up to 2 years in Canada;
- loosening of terms for the re-patenting of existing drugs (inclusion of 8 years of data/market exclusivity for biologics."

Ruckert and Labonte go on to say that one estimate of similar Intellectual property rights concessions in CETA suggested that Canadian conventional drug costs will increase by anywhere between 6.2% and 12.9% starting in 2023 (or by at least C$800 million annually.(17) There are also concerns that generous patent protection may diminish investments by pharmaceutical companies in drug exploration, (17) and that the TPP's chapter on investment could lead to "foreign-invested private health insurance providers launching costly investor-state claims against expansion of Canadian public health insurance into such areas as pharmaceuticals ('pharmacare') and home care."(17)

Labonte and Ruckert conclude: "While flexibilities for such regulation can still be found in contemporary trade and investment agreements, including the TPP, new provisions risk impeding governments' abilities to maximize public health protection without running afoul of what are essentially commercial agreements. More importantly, there is no evidence that the TPP will substantively benefit most workers in most TPP countries."(17)

Fundamentally—what is the ultimate goal of society? CAPE believes that a healthy society is the ultimate goal.

The TPP, as written, gives the profit-making principle precedence over the Precautionary Principle. Realizing that there's a trade deal that has huge impacts on public health—and which was negotiated without the transparent input of each nation's best public health minds…is also very frustrating if you've spent 12 years becoming a physician.

Public health decisions have the potential to influence overall health status more than anything that happens in a hospital. If your Mom got diagnosed with Cancer—would you hand the decision over whether or not to go ahead with her treatment over to a lawyer?

If you wouldn't, then it makes no sense to ratify the TPP as it is currently written.

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